

The Pennsylvania State University

The Graduate School

College of Communications

PRIVACY AND COMMUNICATIONS TECHNOLOGIES IN U.S. HISTORY:

A COMPARISON OF CONCEPTS OF PRIVACY IN RELATION TO

CHANGING COMMUNICATIONS TECHNOLOGIES

A Thesis in

Mass Communications

by

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Submitted in Partial Fulfillment
of the Requirements
for the Degree of

Doctor of Philosophy

May 2006

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ABSTRACT

This comparative study explores the relationship between the concept of privacy and the development of communications technologies in U.S. history. This examination of privacy with communications technologies helps us to understand how the concept of privacy has gained its new contents, meanings, and functions in different times and societies shaped by communications technologies. Before examining the relationship between privacy and communications technologies, this study attempts to define the fundamental nature and functions of privacy from a philosophical perspective by using body-heart-mind (physical-emotional-spiritual) metaphors.

In relation to mainstream communications technologies, this study examines the main concerns of privacy as related to mass media and the Internet, respectively. Newspapers, the first mass medium, changed the nature of privacy concerns from the physical intrusion on personal boundary to the exposure of personal life. On the other hand, the rise of the Internet in the information society has again raised new concerns of privacy, but ones focused on the abuse of personal information.

This study compares these findings and traces the changing aspects of privacy as they relate to communications technologies. After analyzing the relationship between the nature of privacy (physical-emotional-spiritual privacy) and communications technologies, this study also suggests directions and guidelines for making privacy policies in the Internet age.

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ACKNOWLEDGEMENTS

I have been blessed and graced by so many wonderful people while studying at the Pennsylvania State University and living in State College, Pennsylvania, for the past 7 years. I am very fortunate to have an excellent advisor, Dr. Patrick Parsons who guided and helped me to complete my study. My special thanks go to all committee members: Dr. Richard Taylor who corrected my dissertation with great care; Dr. Matt Jackson who encouraged me by emphasizing the creativity and originality of my study; Dr. Steven A. Walton who suggested to me concrete examples to help make my study more understandable; Dr. Steven Sawyer who always treated me with a smile and a warm heart. Without these committee members, I could not have completed my study. I am grateful for their academic expertise and sincere guidance.

As a priest and director of the Korean Catholic community, I have enjoyed the spiritual life with the campus ministry of the Pennsylvania State University, including daily Mass in the University Chapel. I appreciate the unconditional help of the priests who have cared for me and the Korean Catholic community during the past years: Fr. Fred Byrne O.S.B., Fr. Conan Feigh O.S.B., Fr. Joseph Hlubik, Fr. Stephen Honeygosky O.S.B., Fr. David Griffin O.S.B., Fr. Boniface Hicks O.S.B., and Fr. Matthew Laffey O.S.B. They willingly encouraged and assisted me throughout the process. I have to express my thanks to Msgr. David Lockard who graciously permitted our community to have the Korean Sunday Mass at the beautiful and prayerful Our Lady of Victory Church. My heartfelt gratitude also goes out to Msgr. Philip Saylor who sacrificed many hours to proofread and edit my dissertation.

It has been my great pleasure and joy to be part of the Korean Catholic community at the Pennsylvania State University and I hope that I have served them well. I am indebted to all the members of this community for the numerous prayers offered on my behalf and for the support given me. I am also edified by the sacrifices of individuals within the group for the good of the community as a whole. Most importantly, I thank the Archdiocese of Seoul, Korea, for granting me the opportunity to come to State College to study Mass Communications at the Pennsylvania State University.

Chapter 1

INTRODUCTION

1.1 Privacy Tensions in the Internet Age

The universal use of the Internet provides individuals with many benefits and advantages to make our living conditions more convenient than ever before. In 2002, more than 70 percent of Americans used the Internet to communicate with other people and to get information by surfing on the sea of knowledge.¹ The Internet, the network of networks, is seen as a good utility for rapidly and efficiently searching, collecting, and transmitting information. We cannot deny that we are living in the information society in which the Internet upholds the communications infrastructure.

While enjoying many benefits of the Internet as a new communication technology, at the same time we are experiencing some disadvantages. Several tensions accompanied the development of the Internet, including the invasion of privacy. Working on the Internet, people leave traces on the web and eventually expose personally identifiable information about themselves such as their names, addresses, telephone numbers, credit card information, medical histories, religious information, hobbies, and so on.²

¹ “More than 70 percent (71.1 percent) of Americans in 2002 went online, compared to 72.3 percent in 2001 (a statically insignificant difference), but up from 66.9 percent in the first UCLA Internet Project in 2000. While the number of Internet users stabilized in 2002, the number of hours online continued to increase – rising to an average of 11.1 hours per week in 2002, up from 9.8 hours in 2001 and 9.4 hours in 2000.” UCLA Center for Communication Policy, *The UCLA Internet Report: Surveying the Digital Future - Year Three* (Los Angeles, CA, February 2003), 17.

² Anne Wells Branscomb, *Who Owns Information?* (New York: BasicBooks), 1994.

Knowledge of personal information in the digitalized, networked, and electronic environment is no longer limited to individuals only. Other agencies, especially large institutions like governments and businesses can access, seek, and even control personal information on the Internet by using sophisticated computer technology.

Online companies can currently track personal identity data: addresses, phone numbers, financial status, buying habits, credit records, health profiles, and social, political and religious affiliations. Many different types of organizations can use these data to find out personal information for a wide variety of purposes. This kind of story has often appeared in newspapers recently:

Some big computer out there knows all about Joan Schram. Its massive memory has stored the birth dates of family members and friends, the fact that she drives a Ford Explorer, and the names and birth dates of her American shorthair cat and rare Brazilian fila dog. And she's thrilled about it. Schram gave out the information herself, answering screen after screen of personal questions from LifeMinders Inc., a Herndon-based company that collects such data from consumers and e-mails them information in return—reminders of important dates, tips on when it's time to treat the cat for ticks, and news and advertising targeted to their interests.³

As the Internet has become more ubiquitous and spread out, the risk of abuse of personal information has long raised special concerns about the individual's right to privacy. The invasion of privacy in the Internet environment reflects the conflict between basic human rights and the use of new communication technology. In the Internet age, privacy seems to represent one of the core conflicts between human rights and new

³ John Schwartz, "Opting In: A Privacy Paradox," *The Washington Post*, H01, Sept. 3, 2000. LifeMinders is the leader in online direct marketing industry, having quietly signed up 18 million members that give it one of the largest online consumer databases since the company was founded in June 1996.

technology that is designed to enhance the quality of human living. These privacy problems on the Internet have appeared in individual, social, and economic dimensions.

In order to explore and analyze contemporary privacy issues and solutions in the Internet age, it is very valuable to trace the relationship of privacy and other communications technologies such as mass media in history. We can obtain many benefits from an historical approach and its findings. As a whole, we will find the historical development of privacy concerns according to communications technologies that have brought different shapes of society and culture. On the basis of these historically different aspects of privacy concerns, we can compare these characteristics to understand the trend of privacy tensions, to diagnose present privacy conflicts, and to suggest directions and standards on privacy policy making in the Internet technology environment.

1.2 The Procedure of This Study

As suggested by the subtitle, ‘a comparison of concepts of privacy in relation to changing communications technologies,’ this study investigates privacy concerns within diverse communications technologies that appeared and shaped society in history. The analysis of privacy in terms of communications technologies helps us to understand changing aspects of privacy concerns. On the basis of the comparison on privacy violation and protection in different times and societies, we can examine privacy tensions and solutions in the Internet age.

For these purposes, this study has three main chapters in its construction. The next chapter will examine privacy itself in terms of its definitions, meanings, and functions before we move into the analysis of privacy concerns according to communications technologies. The goal of exploring the concept of privacy is to set forth the basic aspects of privacy that have been emphasized in different ways due to the changes of the times and societies. This approach is intended to show a variety of meanings and functions of privacy before launching an analysis of historical privacy concerns with communications technologies. In addition, at the end of this chapter I will synthesize the diverse meanings of privacy and create a simple framework on privacy linking to the body-heart-mind of a human being (physical-emotional-spiritual aspects of privacy). The purpose of this framework is to promote the comparison and contrast of dominant concepts on privacy in the different communications technologies.

This study will explore the relationships of privacy and communications technologies. With the advent and development of mass communications technologies such as newspapers, radio, television, and the Internet, we can discover the different aspects of privacy that new communications technologies have brought to society by their characteristics. This study will classify communications technologies according to the time order during which mainstream communications technologies have sustained a communication structure of society in history. In chapter 3, this study will examine the relationship of privacy and mass media, including the printing technology of newspapers and the electronic technology of radio and television. In particular, newspapers will be the main focus of analysis of mass media because they were the first mass medium to appear in history and the continuous and principal force of privacy conflicts followed by

other mass media. Mass media shifted the main privacy concerns from the invasion of personal territory to the disclosure of personal life in the public sphere with which mass media provide society. Chapter 4 will examine the relationship of privacy and the Internet through which we can explore current tensions and issues of privacy. The Internet has changed the main concerns of privacy to the importance of personal information in the information society.

The concluding chapter will compare the findings that previous chapters produced about privacy concerns in society where communications technologies have played a pivotal role to sustain communication structures. With respect to diverse criteria of privacy, this comparative analysis will help us to understand not only why new mainstream communications technologies brought new and different privacy concerns, but also how these privacy concerns changed the main content of privacy such as the invasion of personal territory, the disclosure of personal life in the public sphere, and the use of personal information without consent. Ultimately, this study will point out salient privacy tensions in the Internet society by comparing it with other communications technologies, and suggest guidelines for public policies on privacy in the Internet age.

1.3 The Distinctiveness of This Study

Since the late nineteenth century, privacy has become an important value and right in and of itself, in the sense that society has recognized the necessity of protecting citizens from its invasion. Because of this significance of privacy over the past one hundred years, many disciplines have approached the notion of privacy in their own areas

to clarify the meaning and nature of privacy. In general, legal, social-psychological, philosophical, and economic approaches are the main disciplines for the research of privacy.

The most productive research on privacy has been done in the field of law where privacy has been recognized as one of the important human rights in the nineteenth century, and has been debated through legislation and court decisions for over a century. Beginning with the first publication of “The Right to Privacy”⁴ by Samuel Warren and Louis Brandeis in 1890, a majority of research on privacy has been conducted in the legal community by legal specialists. The legal approach has dealt with privacy in terms of tort⁵ or constitutional law⁶ on the basis of decisions⁷ at various court levels including state, federal, and the Supreme Court. In addition, legal research has studied a variety of statutes and regulations on privacy created by government as well as the legal responses to technological changes that were recognized as threatening individual privacy.⁸ Most research of policy making on privacy similarly has focused on statutes and regulations regarding privacy.⁹

⁴ Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” *Harvard Law Review* 4, no. 5 (Dec. 1890): 193-220.

⁵ William L. Prosser, “Privacy,” *California Law Review* 48, no. 3 (August 1960): 383-423; Edward J. Bloustein, “Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser,” *New York University Law Review* 39, no. 6 (December 1964): 962-1007.

⁶ Darien A. McWhirter and Jon D. Bible, *Privacy as a Constitutional Right: Sex, Drugs, and the Right to Life* (New York: Quorum Books, 1992); Darien A. McWhirter, *Search, Seizure, and Privacy* (Phoenix, Arizona: Oryx Press, 1994); David M. O’Brien, *Privacy, Law, and Public Policy* (New York: Praeger, 1979).

⁷ Richard A. Glenn, *The Right to Privacy: Right and Liberty under the Law* (Santa Barbara, California: ABC-CLIO, 2003).

⁸ Priscilla M. Regan, *Legislating Privacy: Technology, Social Values, and Public Policy* (Chapel Hill: University of North Carolina Press, 1995).

⁹ Fred H. Cate, *Privacy in Perspective* (Washington, D.C.: AEI Press, 2001).

The sociological approach has become another main research field for privacy. One example of this approach is *Privacy and Freedom*¹⁰ by Alan Westin, which examines the four basic states (solitude, intimacy, anonymity, and reserve) as well as the four functions (personal autonomy, emotional release, self-evaluation, and limited and protected communication) of privacy in society. The sociological approach for the most part has been concerned with the function of surveillance in society due to the enhanced technological innovations encompassing listening, watching, and data collection devices.¹¹ In this context, most sociological research necessarily addresses the new technological development that consequently raises most privacy concerns.¹² Four areas are salient as social issues on privacy: the government role as a threat to and defender of privacy, consumer privacy, medical and genetic privacy, and workplace privacy.¹³

On the other hand, *The Environment and Social Behavior*¹⁴ by Irwin Altman studied privacy from the social psychological and environmental psychological view in terms of social interaction and human behaviors by which people regulate desired levels of privacy.¹⁵ Conceiving privacy as an interpersonal boundary process by which a person

¹⁰ Westin also brought other discipline such as psychology into privacy research, and he studied privacy from a cross-cultural perspective. Alan F. Westin, *Privacy and Freedom* (New York: The Association of the Bar of the City of New York, 1967).

¹¹ David Brin, *The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?* (Reading, Massachusetts: Addison-Wesley, 1998); David Lyon and Elia Zureik, ed., *Computers, Surveillance, and Privacy* (Minneapolis, MN: University of Minnesota Press, 1996).

¹² Philip E. Agre and Marc Rotenberg, ed., *Technology and Privacy: The New Landscape* (Cambridge, Massachusetts: MIT Press, 1997).

¹³ Stephen T. Margulis, "Privacy as a Social Issue and Behavioral Concept," *Journal of Social Issues* 59, no. 2 (2003): 243-261.

¹⁴ Irwin Altman, *The Environment and Social Behavior: Privacy, Personal Space, Territory, Crowding* (Monterey, CA: Brooks/Cole, 1975).

¹⁵ Stephen T. Margulis, "On the Status and Contribution of Westin's and Altman's Theories of Privacy," *Journal of Social Issues* 59, no. 2 (2003): 418-423.

or group regulates interaction with others, he found that the environment of social conditions such as personal space, territoriality, and crowding are behavioral mechanisms to achieve the privacy goals through the regulation of interpersonal interaction.¹⁶ In most cases, the psychological study on privacy usually uses the concept of boundary control through which people restrict and seek interaction to achieve a desired degree of access to the self or one's group by others at a particular time and in a given set of circumstances.¹⁷

Philosophical study of privacy has gained little attention because privacy has been behind other important and competitive issues such as liberty and equality in the twentieth century. To promote more philosophical study on privacy, *Philosophical Dimensions of Privacy: An Anthology*¹⁸ introduced diverse philosophical approaches to define the nature and meaning of privacy. Despite the small number of works of philosophical research on privacy, *Transforming Privacy: A Transpersonal Philosophy of Right*¹⁹ by Stefano Scoglio tries to find philosophical roots of privacy and connect the origin of privacy with the liberal theory of western society. Compared with the concerns of privacy in modern society, the effort of philosophical study to find the origin and nature of privacy has been relatively short.

¹⁶ Irwin Altman, Anne Vinsel, and Barbara B. Brown. "Dialectic Conceptions in Social Psychology: An Application to Social Penetration and Privacy Regulation," in *Advances in Experimental Social Psychology* 14, ed. Leonard Berkowitz, 112-117 (New York: Academic Press, 1981).

¹⁷ Darhl M. Pedersen, "Psychological Functions of Privacy," *Journal of Environmental Psychology* 17, no. 3 (June 1997): 147-156; Darhl M. Pedersen, "Model for Types of Privacy by Privacy Functions," *Journal of Environmental Psychology* 19, no. 4 (Dec. 1999): 397-405.

¹⁸ Ferdinand David Schoeman, ed., *Philosophical Dimensions of Privacy: An Anthology* (Cambridge: Cambridge University Press, 1984).

¹⁹ Stefano Scoglio, *Transforming Privacy: A Transpersonal Philosophy of Rights* (Westport, Connecticut: Praeger, 1998).

Recently, economic perspectives on privacy have been more prevalent as the information society has evolved. Personal information has become a very important resource in economic activities for companies seeking target audiences.²⁰ Economic study on privacy usually concerns regulation because regulation directly affects the activities of companies in the market.²¹ For example, more regulation on privacy in restricting businesses from obtaining personal information would hurt economic development; on the contrary, more support of the market by allowing them to have access to personal information would sacrifice the right to privacy. The goal of privacy policy or regulation is by and large to balance the interests of the market and the protection of consumers.²²

Although I try to distinguish the main fields on privacy, in fact many scholars study privacy not from a single perspective, but by combining as many approaches as possible to understand broadly and deeply the meanings and characteristics of privacy. For example, studies on privacy with respect to new technologies have used many approaches, such as legal, sociological, and economic, in order to contribute to the understanding of privacy conflicts and their solutions. While many scholars have studied the relationship between privacy and technologies from diverse perspectives, there has been very little attention paid to privacy issues with respect to the sole perspective of communications technologies or mass communications.

²⁰ Richard A. Posner, "An Economic Theory of Privacy," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman, 333-345 (Cambridge: Cambridge University Press, 1984).

²¹ Fred H. Cate, *Privacy in the Information Age* (Washington D.C.: Brookings Institution Press, 1997).

²² Colin J. Bennett and Rebecca Grant, ed., *Visions of Privacy: Policy Choices for the Digital Age* (Toronto: University of Toronto Press, 1999); Colin J. Bennett and Charles D. Raab, *The Governance of Privacy: Policy Instruments in Global Perspective* (Burlington, VT: Ashgate, 2003).

My interest in privacy in the development of communications technologies is the core of this study. Taking communications technology as a perspective for the analysis of privacy is original and distinctive while communications technology has only been implied in all the other research. This study will help us to understand the changing aspects of privacy in terms of its nature, meaning, and issues which the advancement of communications technologies has brought to society. The findings of this study will bring us the clearer and deeper comprehension of privacy in past and present times and societies.

This study uses the philosophical analysis of privacy concept to define the meaning and function of privacy by applying body (physical), heart (emotional), and mind (spiritual) metaphors. To promote the comparison of diverse concepts of privacy in different communications technologies, on the other hand, this study creates a framework that synthesizes a variety of meanings and aspects on privacy. This framework simplifies many concepts of privacy in a metaphysical way that privacy has a connection to a human being with body (physical privacy), heart (emotional privacy), and mind (spiritual privacy). The framework helps us to recognize the important dimensions of privacy and compare the different characteristics of privacy.

The suggestion of a distinctive body-emotion-spirit concept on privacy is a new philosophically synthesized conceptualization of privacy. It makes convenient the comparison and contrast of changing meanings on privacy in different eras of communications technologies. As a result, the basic framework of privacy will help us to understand the significant difference of privacy concerns in relation to communications technologies. On the basis of this understanding, we can discover core concepts, main

violations and protections of privacy according to the social environment created by mainstream communications technologies, and then address desirable foundations and directions for privacy issues in the Internet age.

Chapter 2

THE NATURE AND FUNCTIONS OF PRIVACY

2.1 Origins of the Concept of Privacy

The term 'privacy' is used frequently in ordinary life as well as in philosophical, social, political and legal discussions. Even though we seem to know what it means, there is no single definition or meaning of the term. The difficulty of defining privacy comes primarily from a variety of meanings and assumptions that each culture and each person holds. In general, western culture has valued the right to privacy, whereas in the rest of the world where the concept of individualism has been underdeveloped, the right to privacy is also under-evaluated.²³ Even in the same culture or society, there are individual differences on the meaning of privacy in a given case and situation.²⁴

Regardless of the lack of sharing exact academic meanings of privacy, there is common ground to understand it. Historically, conceptual roots of privacy stem from Aristotle's political distinction between public and private realms.²⁵ He distinguished the

²³ The study of privacy in eastern culture is very rare. Recently one book explores privacy in China. Bonnie S. McDougall and Anders Hansson, ed., *Chinese Concepts of Privacy* (Leiden, The Netherlands: Brill, 2002); Barrington Moore Jr., "Ancient Chinese Conceptions of Public and Private," in *Privacy: Studies in Social and Cultural History*, 219-266 (New York: M. E. Sharpe, 1984).

²⁴ Richard A. Wasserstrom, "Privacy: Some Arguments and Assumptions," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman, 317-332 (Cambridge: Cambridge University Press, 1984).

²⁵ Aristotle explains that a city consists of many villages spring from households that as basic communities are composed of husband and wife, father and child, and master and slave. Simply speaking, the household management belongs to private matters and the city life belongs to public matters requiring politics.

public sphere of political activity related to a common world from the private sphere of household and family associated with the maintenance of domestic life.²⁶ Since then, privacy has been referred to a sphere separate from the public or government, a domain inappropriate for governmental interference, restricted access to an individual, unpublicized views and opinions, solitude, and so on. As such, the use of the term is not uniform, and there remains confusion over the meanings, values and scope of the concept of privacy.

As a basic human right in terms of the legal perspective, privacy emerged in the late nineteenth century. Probably the earliest mention of privacy as a kind of right to an individual appeared in 1880 in Judge Thomas Cooley's treatise on torts, where he mentioned "the right to be let alone," referred to as a right to one's person and to personal immunity as a means to preserve the peace and quiet of an individual.²⁷ His characterization of "the right to be let alone" was used by Samuel Warren and Louis Brandeis ten years later in the famous American law review, titled "The Right to Privacy."²⁸ In this article, which became an influential cornerstone to the right to privacy, they deeply and broadly discussed and illuminated the term 'privacy.' Suggesting the

Aristotle, *The Politics of Aristotle*, trans. Peter L. Phillips Simpson, 1252a1-1260b20 (Chapel Hill: The University of North Carolina Press, 1997).

²⁶ Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 28-37. On the other hand, Judith Swanson disagrees that Aristotle treats the private only in contradistinction to the public. "Modern expositors may infer that Aristotle equates the private with the household because they are familiar with the liberal tradition's formulation of the private as a 'sphere.' In any case, Aristotle's conception of the private includes both the household and the meaning of *idios* ('private' or 'one's own'), but it goes beyond both; for the private is constituted of activities that cultivate virtue and discount common opinion." Judith A. Swanson, *The Public and the Private in Aristotle's Political Philosophy* (Ithaca, New York: Cornell University, 1992), 1-2.

²⁷ Thomas M. Cooley, *A Treatise on the Law of Torts on the Wrongs which arise Independent of Contract* (Chicago: Callaghan and Company, 1880), 29.

²⁸ Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4, no. 5 (Dec. 1890): 193-220.

need for the right of privacy, they favored tort law protection for emotional and mental harms generated by publication of personal stories that were neither appropriate nor relevant to the public interest.

Warren and Brandeis recognized that recent inventions such as newspapers and photography brought political, social, and economic changes on the concept of press and publicity. On the other hand, they argued that existing law should afford a way to protect the privacy of the individual, “the right to be let alone” against public dissemination of details relating to an individual’s domestic life. Under the right to privacy, the law should protect the individual’s mental well-being by limiting the extent to which one’s thoughts, sentiments, and emotions can be disclosed to the public. Differentiating privacy from intellectual property, they proposed a principle of inviolate personality such as peace of mind, that was part of a general right of immunity of the person, the right to one’s personality.²⁹

Warren and Brandeis argued that just as physical injuries to body and property are compensable, injuries to personality such as mental pain and distress arising from intrusion on the “obvious bounds of propriety and decency” should be compensable.³⁰ Although the principle of privacy was already part of common law like the protection of one’s home, new technology such as newspapers and photography made it necessary to preserve the right of privacy by creating legal terms or standards of privacy. Warren and Brandeis officially proposed and founded the basic and fundamental concept of privacy

²⁹ Warren and Brandeis, 195. 215.

³⁰ Warren and Brandeis, 196.

as a legal right, but its interpretation and application varied along with the trend of social, political, economic, and legal changes over the next century.

2.2 Concepts of Privacy Developed from the Law

More than any other social and political area, American law has tried to protect some values under the right of privacy. Thus, it is very practical to trace the legal development of the right to privacy in order to see what values or concepts have been protected in the name of privacy because law is an indicator of the values of a certain culture and society.

Since Warren and Brandeis' publication on the right to privacy in 1890, the courts acknowledged and expanded the right to privacy in order to provide enforceable injunctive relief for a tort. However, there had been confusion and inconsistencies in the development of privacy protection in the law. In an attempt to systematize and more clearly describe and define the right of privacy in tort law, William Prosser in 1960 analyzed the previous court cases. He classified four distinct types of privacy rights as follows: 1) Intrusion upon a person's seclusion or solitude, or into his private affairs: 2) Public disclosure of embarrassing private facts about an individual: 3) Publicity which places one in a false light in the public eye: 4) Appropriation of one's name or likeness for the advantage of another.³¹ The privacy right as an inviolate personality, Warren and Brandeis suggested, was intended for the protection of a secluded and private life, free

³¹ William L. Prosser, "Privacy," *California Law Review* 48, no. 3 (August 1960): 389.

from the prying eyes, ears and publications primarily by newspapers and photography. In the 70 years following the publication of the Warren and Brandeis' paper, the conventional privacy torts that courts in fact protected were largely subjected to compensatory liability for the resulting measurable damages to the interests of the individuals rather than the protection of invisible personality or personhood such as mental distress and pain.

Since 1965, courts have applied constitutional law to extend the interpretation of privacy protection. Apart from the common and established concept of privacy such as the Fourth Amendment (unreasonable search and seizure),³² the Supreme Court recognized a quite different right to privacy in the *Griswold v. Connecticut* case in 1965.³³ The case initially addressed the question of the constitutionality of a statute that proscribed the use of any drug, medical article or instrument for the purpose of preventing conception. Griswold, the executive director of the Planned Parenthood League of Connecticut, was found guilty of violating a statute that prohibited giving contraceptive related information, instruction, and medical advice to married persons. Delivering the opinion of the Court, Justice William Douglas argued that the birth control statute forbidding the use of contraceptives violated the constitutional right to privacy that is considered a 'penumbra' emanated from the Bill of Rights.³⁴ In a similar vein, the

³² The Fourth Amendment of the United States Constitution provides; "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

³³ 381 U.S. 479 (1965).

³⁴ Justice Douglas "concluded that the 'First Amendment has a penumbra where privacy is protected from governmental intrusion,' and, more generally, that 'the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance.' The First Amendment (free

right to privacy was applied to justification of abortion rights in *Roe v. Wade* in 1973.³⁵

The Supreme Court has protected human activity related to the sexual and reproductive processes from governmental interference on the rights of privacy. Even though Douglas maintained that the right to privacy could be found in the penumbra of such explicit constitutional rights, the definition of the right of privacy has remained unclear. Many scholars have called it a right of decisional privacy in making certain important and personal decisions about one's family, life and lifestyle including contraceptives and abortion. After these decisions of the Supreme Court, there have been countless questions or arguments on the controversy of whether the Constitution does contain that kind of right to privacy.³⁶

With development in surveillance technologies, on the other hand, many laws were established to protect the personal right to privacy. These laws include both congressional statutes and agency regulations that govern privacy. They have generally dealt with privacy issues on a sectoral basis. Examples of major federal laws include the Fair Credit Reporting Act, the Privacy Act, the Family Educational Rights and Privacy Act, the Right to Financial Privacy Act, the Cable TV Privacy Act, the Electronic Communications Privacy Act, the Video Privacy Protection Act, the Driver's Privacy

speech), the Third Amendment (no quartering of soldiers in homes), the Fourth Amendment (no unreasonable searches and seizures), the Fifth Amendment (no forced self-incrimination), and the Ninth Amendment (declaring that rights not specifically listed in the Bill of Rights are still protected by the Bill of rights), he argued, all speak to the existence of a general right of privacy." Darien A. McWhirter and Jon D. Bible, *Privacy as a Constitutional Right: Sex, Drugs, and the Right to Life* (New York: Quorum Books, 1992), 97.

³⁵ 410 U.S. 113 (1973). Texas statutes only allowed abortions if they were necessary to save the life of the mother. An anonymous 'pregnant, single woman' who could not obtain an abortion brought the case. Seven justices agreed that the right to privacy included the right to obtain an abortion.

³⁶ John A. Rohr, "Privacy: Law and Values," *Thought* 49 (December 1974): 365-367.

Protection Act, and the Children's Online Privacy Protection Act.³⁷ Most statutes have reinforced the notion that personal information is one of the core concepts of privacy, so that they restrict access to personal information or establish a set of fair information practices regulating the collection, storage, transfer, and use of information.³⁸ To assure the respect for privacy rights, fair information practices grant individuals a certain degree of control over the accessibility and dissemination of their personal information.

In conclusion, the right to privacy that appeared in the late nineteenth century was intended as a protection of personal life against intrusion from private sectors such as newspapers and prying neighbors. Since then, in the actual application of privacy, however, tort law has applied the privacy right to the measurable damages to interests of individuals rather than the protection of inviolate personality including mental sentiments and feelings. On the other hand, privacy defined as a part of constitutional rights went on to limit the power of states and governments to interfere with important individual decisions about one's marriage or family affairs, especially on the matter of contraception or abortion. Today modern technology has posed ongoing threats to privacy with eavesdropping, surveillance, and appropriation and misuse of personal information. Thus, most statutes and regulations on the right to privacy concentrate on the control or restricted access over information about oneself and protect personal information from

³⁷ Jacqueline Klosek, *Data Privacy in the Information Age* (Westport, CT: Quorum books, 2000), 133-142.

³⁸ Fair information practices have five core principles of privacy protection: Notice, Choice, Access, Security, and Enforcement. FTC, *Privacy Online: Fair Information Practices in the Electronic Marketplace: A Report to Congress* (May 2000), 3-4; FTC, *Privacy Online: A Report to Congress* (June 1998), 7-11.

the communications technologies used by government and corporate sectors in the information society.

2.3 The Difficulty of Defining Privacy and Fundamental Traits of Privacy

In most cases, everyone seems to know what privacy is, but it is very difficult to define it because it implies a broad range of things such as autonomy, solitude, confidentiality, anonymity, reserve, secrecy, intimacy, and so on.³⁹ In fact, privacy means different things to different people at an individual level as well as to different societies and cultures on a larger scale. Thus, no single and universal definition of privacy represents all aspects and implications of the reality of privacy.

Even though we have real difficulty defining privacy, we roughly assume what privacy is. Privacy is something ‘personal’ that we do not want to share with others. The term ‘personal’ describing attributes of privacy indicate individual characteristics or nature. The nature of a person in general contains body, heart, and mind. On the basis of these temperaments of a human being, a person manages physical, emotional, and spiritual aspects in daily life. Thus, privacy relevant to personal traits has a salient relationship with bodily, sentimental, and mindful dimensions.

The physical aspect stands for keeping the personal sphere or boundary distant from others’ interference. Instinct tells us that having safe space means the protection of

³⁹ Westin delineates four types of privacy: Solitude (freedom from observation by others), Intimacy (being alone with closed others such as friends and family), Anonymity (being among others but without personal surveillance by them), and Reserve (unwillingness to disclose personal aspects of self to others). Alan F. Westin, *Privacy and Freedom* (New York: The Association of the Bar of the City of New York, 1967), 31-32.

one's life from dangerous attacks which might prevail in primitive society.

Conventionally one's house as a territorial space functions to control access to private realms and minimizes others' intrusiveness. This physical aspect of a person is literally the basic and fundamental requirement for being let alone so that one's physical being is not intruded upon by unfamiliar others.

The emotional aspect means not to be embarrassed or uncomfortable in one's personal life. People in most cases do not want to reveal to unfamiliar others their own information, habits, loves, likes, tastes, and so on. Except for intimate or significant persons, others have no business in private lives and personal relationships. In intimate relationships, however, people sometimes tell friends their secrets to live emotionally. They are less careful about what they say and do and the consequence of each action they take.⁴⁰ In fact, unrestricted emotional expressions are essential for the intimacy that also plays an important role in the development of an articulate inner life.⁴¹ Voluntary and free expression and action gives people some emotional release, but unwanted disclosure or exposure of their life to the public or unfamiliar others would severely hurt their emotions.⁴² In this sense, they do not want to reveal their private life to the public sphere. If people remain anonymous or not identified by others when they go to a public place such as a park, a theater, or a stadium, this does not affect one's behavior because their appearance is out of others' sight and concern. Emotional privacy requires some

⁴⁰ Aaron Ben-Ze'ev, "Privacy, Emotional Closeness, and Openness in Cyberspace," *Computers in Human Behavior* 19 (2003): 453-455.

⁴¹ Thomas Nagel, *Concealment and Exposure* (Oxford: Oxford University Press, 2002), 15-20.

⁴² Ferdinand Schoeman, *Privacy and Social Freedom* (Cambridge: Cambridge University Press, 1992), 14-20.

concealment, not to be seen and heard by others to avoid disturbance for the peace of heart and mind.

The spiritual aspect emphasizes the self-determination and self-definition on matters of private and family affairs. Autonomy well represents this characteristic of spiritual dimension.⁴³ Autonomy enables one to make decisions on the important things and affairs in one's way, unforced by others. In other words, one has the right to a private domain in which he is autonomous.⁴⁴ The spiritual aspect of a person makes one's own life style different from others. It protects some kinds of freedom and independence for individuals to develop their identities and values as self-conscious beings.⁴⁵ The spiritual dimension of a person allows an individual to retain or preserve one's way of life.

2.4 Functions of Privacy

We keep things in a private or personal way lest we share with unknown others. Privacy shields individuals from physical intrusion; emotional embarrassment and discomfort in a confidential, secret, anonymous fashion; and spiritual intervention. The importance of privacy in any society is to allow an individual to pursue self-development

⁴³ Stanley I. Benn, "Privacy, Freedom, and Respect for Persons," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman, 241-243 (Cambridge: Cambridge University Press, 1984).

⁴⁴ Lloyd L. Weinreb, "The Right to Privacy," in *The Right to Privacy*, ed. Ellen Frankel Paul, Fred D. Miller Jr., and Jeffrey Paul, 30-34 (Cambridge: Cambridge University Press, 2000).

⁴⁵ Judith Wagner DeCew, *In Pursuit of Privacy: Law, Ethics, and the Rise of Technology* (Ithaca: Cornell University Press, 1997), 164.

and to establish intimate relationships.⁴⁶ In this context, we can examine the functions of privacy for self-formation as well as for human relationships.

In terms of the three aspects of privacy (physical, emotional, and spiritual), all are necessary for desirable self-development and healthy human relationships. Examining the relationships between these three aspects and the function of privacy, however, the physical and spiritual aspects of privacy are more connected to self-development than the emotional aspect of privacy. In contrast, emotional privacy promotes more intimate relationships than physical and spiritual privacy. In other words, at an individual level, physical and spiritual privacy are fundamental to self-development. At the level of human relationships, emotional privacy plays an important role for the establishment of intimate relationships.

If we examine the three aspects of privacy, we can understand the function of privacy. The most traditional notion of privacy is physical privacy. It provides individuals with the feeling of safety and protection. Physical privacy comes from the category of property through two commonly cherished ideas: that one's house is one's castle and that one has a sort of privacy zone around one's body. For instance, when the government claims the legitimate power to penetrate the proprietary shell through searches and seizures, physical privacy is concerned with physical access to a physical body or physical residence.⁴⁷ Without physical privacy, people cannot secure the property and possession of their belongings as well as their physical living in a protective shelter.

⁴⁶ Priscilla M. Regan, *Legislating Privacy: Technology, Social Values, and Public Policy* (The Chapel Hill: University of North Carolina Press, 1995), 25-33.

⁴⁷ Elizabeth B. Bazan, "The Fourth Amendment: A Changing Landscape," in *Personal Privacy*, ed. Vita Cornelius, 51-55 (New York: Noinka Books, 2002).

Physical privacy provides individuals with the safe and peaceful place or space to rest themselves in protection from outside threat or invasion.

Spiritual privacy helps an individual to develop and accomplish personality and spirituality in one's own way. This privacy provides mental room for an individual to reflect on oneself, others, and new situations, as well as to form autonomous opinions and independent behaviors on the basis of one's judgment. Spiritual privacy allows individuals to reflect many thoughts and prepare some opinions before presenting them to the public. Without this kind of spiritual autonomy and independence, individuals cannot make their own judgments, decisions, and choices about their personal actions just as children are always dependent on their parents. On the other hand, spiritual privacy contributes to the enhancement and formation of personhood that allow a person to be a human being of consciousness in a moral sense.⁴⁸ Unlike physical privacy, in many cases it is scarcely considered an aspect of privacy at all. Privacy concerns the inner space of a person's heart, mind, and soul, which creates their own personality or personhood as they are. Individuals need a space for solitude, silence, and inner reflection in order to cultivate interior processes for understanding, enrichment, and integration of character, personality, or spirituality.⁴⁹ Creating one's own realm that allows an individual 'to be let alone' in a physical as well as spiritual sense is important for personal formation.

Emotional privacy provides an opportunity for emotional release to be out of the public eyes and ears. Individuals enjoy such moments in the anonymity of a park, in the

⁴⁸ Anita L. Allen, *Uneasy Access: Privacy for Women in a Free Society* (Totowa, New Jersey: Rowman & Littlefield, 1988), 43-46.

⁴⁹ Stefano Scoglio, *Transforming Privacy: A Transpersonal Philosophy of Rights* (Westport, Connecticut: Praeger, 1998), 10-13.

private room in one's house, or in the intimacy of family, peers, or close friends.⁵⁰ If individuals cannot afford emotional and psychological relaxation, they would suffer severe stress and result in disease. Emotional privacy not only gives individuals emotional release, but also promotes intimate relationships with family, friends, and lovers.⁵¹ Emotional privacy allows one to share thoughts and behaviors with beloved ones.⁵² Without this kind of emotional privacy, people cannot develop intimate relationships. The more they share their emotional sentiments, the more they care about one another.⁵³ Emotional privacy helps establish intimate relationships by keeping emotional expressions or behaviors unrevealed.⁵⁴

In general, functions of all aspects of privacy provide a solid foundation for an individual's self-development and human relationships. Physical and spiritual privacy help individuals to develop one's personality or personhood. Emotional privacy, on the other hand, helps to establish the primary bonds for living with others in family, work place, and social activities.

⁵⁰ Ruth Gavison, "Privacy and the Limits of the Law," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman, 353-354 (Cambridge: Cambridge University Press, 1984).

⁵¹ Charles Fried, "Privacy," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman, 210-213 (Cambridge: Cambridge University Press, 1984).

⁵² Robert S. Gerstein, "Intimacy and Privacy," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman, 265-271 (Cambridge: Cambridge University Press, 1984); Julie C. Inness, *Privacy, Intimacy, and Isolation* (Oxford: Oxford University Press, 1992), 74-94.

⁵³ Jeffrey H. Reiman, "Privacy, Intimacy, and Personhood," in *Philosophical Dimensions of Privacy: An Anthology*, ed. Ferdinand David Schoeman, 305-308 (Cambridge: Cambridge University Press, 1984).

⁵⁴ Joyce H-S. Li, *The Center for Democracy and Technology and Internet Privacy in the U.S.: Lessons of the Last Five Years* (Lanham, Maryland: The Scarecrow Press, 2003), 31.

2.5 A Framework for Understanding Characteristics of Privacy

Privacy refers to something private or personal that an individual does not want to share with unfamiliar others. The difficulty of defining privacy lies with the impossibility of identifying the adjective terms of ‘private’ or ‘personal’ because those are differently defined according to an individual and a society. In other words, individual and social differences bring a very diverse conceptualization of the ‘private’ or ‘personal’. At an individual level, some people care more for their private or personal life than others. In a similar way, at the societal level, some societies or their cultures value the concept of the private or personal, while other societies or their cultures value the public.⁵⁵ Thus, the concept of privacy is not absolute, but rather changing in times and regions.

The critical criterion of privacy concerns is all about sharing something private or personal. The spectrum of differences on defining privacy in terms of an individual and a society results from the degree of sharing something private or personal. Some people emphasizing privacy allow unfamiliar others to share something of their private lives in a narrower or more controllable way than others relatively deemphasizing privacy. Some societies valuing privacy give their citizens more power or ability to prevent strangers from sharing their personal affairs than other societies relatively devaluing privacy.⁵⁶ To

⁵⁵ Herbert J. Spiro, “Privacy in Comparative Perspective,” in *Privacy. Nomos XIII*, ed. J. Roland Pennock and John W. Chapman, 121-148 (New York: Atherton Press, 1971); John M. Roberts and Thomas Gregor, “Privacy: A Cultural View,” in *Privacy. Nomos XIII*, ed. J. Roland Pennock and John W. Chapman, 199-225 (New York: Atherton Press, 1971).

⁵⁶ Privacy is universal in a way that all cultures have privacy regulation of social interaction in which sometimes people allow others to be accessible, sometimes inaccessible. But, privacy regulation is culturally specific because the behavioral mechanisms used to regulate desired levels of privacy are unique to the particular physical, psychological, and social circumstances of a culture. Irwin Altman, “Privacy Regulation: Culturally Universal or Culturally Specific?” *Journal of Social Issues* 33, no. 3 (1977): 66-84.

preserve privacy means to avoid something private or personal with unfamiliar others in time and space. ‘To be let alone’ is the typical example of privacy that is for others none of their business.

To keep privacy accordingly means a certain refusal to share something private, more specifically, in each aspect, something physical, emotional, and spiritual. On the basis of sharing in terms of physical, emotional, and spiritual aspects, I try to summarize the basic and fundamental characteristics and nature of privacy. Table 1 shows dialectics⁵⁷ and dichotomies⁵⁸ on the diverse features of privacy in terms of various aspects and criteria so that we can more lucidly recognize complicated concepts and meanings of privacy.

With respect to space or territory, physical privacy implies a private sphere that prevents others from invasion on someone’s territory. “Public,” on the contrary, is the opposite concept of privacy because it does not prevent someone’s access. Private-public dichotomy indicates the sharing of something relevant to spatial concept. In terms of a pure territorial perspective, public sphere such as a public library or a park has the characteristic of openness where all the public have access to it, whereas private sphere such as a private room and personal office has the characteristic of closedness where only a single person or a handful of people have access to it. Privacy suggests closed space to

⁵⁷ “In general, ‘dialectics’ refer to the assumption that in social life, people experience tensions between opposites and contradictions.” Sandra Petronio, *Boundaries of Privacy: Dialectics of Disclosure* (Albany, NY: State University of New York Press, 2002), 12.

⁵⁸ These kinds of dichotomy are also referred in the unity of dialectics including connection-autonomy, openness-closedness, and disclosure-privacy. Leslie A. Baxter and Barbara M. Montgomery, *Relating: Dialogues and Dialectics* (New York: Guilford, 1996), 79-105. 132-152; A variety of conceptions of the public and the private can be found in. Stanley I. Benn and Gerald F. Gaus, ed., *Public and Private in Social Life* (New York: St. Martins Press, 1983).

which an individual denies others' access, whereas public suggests an open space in which everyone can enter. Because the boundary of privacy by and large depends on societal and cultural norms, physical privacy has different meanings in different societies and cultures.

Table 1: Dialectics of privacy in terms of various criteria

Aspects of Privacy	Criteria	Dichotomy	
		Privacy (Pro-privacy)	Publicity (Anti-privacy)
<i>Body (Physical Privacy)</i>	Space (Territory)	Private Solitude (Closedness)	Public Society (Openness)
<i>Heart (Emotional Privacy)</i>	Individual level	Concealment	Revelation
	Informal relationship	Secrecy	Disclosure
	Formal relationship	Confidentiality	Exposure
<i>Mind (Spiritual Privacy)</i>	Identity (Life style)	Autonomy (Independence)	Heteronomy (Dependence)

Sharing can also apply to emotional privacy. Emotional privacy means concealment, secrecy, or confidentiality in the expression of personal affairs. On the contrary, revelation, disclosure, or exposure of individual life means sacrificing one's privacy to share it with unfamiliar others. The dichotomies between concealment/revelation, secrecy/disclosure, and confidentiality/exposure designate different aspects of emotional privacy. Concealment/revelation stands for an individual dimension, while secrecy/disclosure and confidentiality/exposure represent relational dimensions of informal and formal relationships, respectively. On the individual

sentiments and feelings, emotional privacy is kept in concealment; otherwise, it is lost in revelation. Regarding relational dimensions of emotional privacy, the informal intimacy between lovers, peers, and family members can be continued in secrecy; otherwise, it can be broken in disclosure. Official relationships such as patients-doctors, clients-lawyers, clients-stockbrokers, customers-insurance companies, or penitents-priests, require confidentiality in the norms of society; otherwise, all people get harmed in exposure. In general, privacy prevents others from sharing personal expressions and relationships, while publicity moves these out to the world.

Spiritual privacy concerns autonomy of judgment, decision, and behavior without the interference or influence of others. In one's own life, autonomy represents the condition of spiritual privacy that guarantees one's independence to govern personal and family affairs. Individuals must be free from the interference or influence of unwanted others. On the contrary, dependence on or influence by others indicates the loss of spiritual privacy that would allow one to keep personal and family matters within one's boundary. No matter what the circumstances are, this connectedness or dependence of personal and family affairs connotes the sharing of one's life with others, a certain loss of spiritual privacy.

2.6 Privacy and Communications Technologies

Communications technologies have expanded publicity with their extraordinary ability of conveyance and coverage. Human beings' natural sight and hearing are very limited in simultaneity of time and close distance of space. Communications technologies

have overcome these limitations and enabled unlimited access to the content that they have distributed to people. In other words, the publicity of communications technologies has created a new public sphere that is different from the traditional one in time and space. The conventional public sphere always requires physical presence at social events. However, the public sphere provided by communications technologies no longer remains with the restriction of physical presence.

This extended public sphere by communications technologies has enabled personal matters to be shared with others who are distant from those concerns. In so doing, communications technologies have brought new concerns about the right of privacy. The difficulty in sharing private affairs with others in traditional society has evaporated with the advent and development of mass media. Communications technologies have gradually extended the public realm; on the contrary, they have made it more difficult to keep domestic matters in the private realm by frequently publicizing personal matters into the public realm. The more the public sphere has extended in society, the more the sharing of personal affairs has happened and the more threat to privacy has been generated. As a result, people have recognized new aspects of privacy that seldom existed in days before mass communications.

In the following chapters, I will examine chronologically the relationship of privacy and mass communications technologies. In particular, the newspapers of mass media and the Internet of computer technology are the mainstream communications technologies that I will explore. The purpose of analyzing mainstream communications technologies is to discover how these technologies have extended the public realm and consequently have brought a greater threat to the private realm.

In addition, mainstream communications technologies have brought new social concerns of privacy different from previous ones. These new concerns of privacy reflect previously inexperienced violations and concomitant protections of privacy because new communication technology has changed the structure and content of communication in societal and economic dimensions. The analysis on diverse relationships between privacy and mainstream communications technologies helps us to discover and understand the changing aspects and meanings of privacy in times and societies.

Chapter 3

PRIVACY AND NEWSPAPERS IN THE LATE NINETEENTH CENTURY

3.1 The Emergence of Privacy as an Issue in the Late Nineteenth Century

By the closing years of the nineteenth century, privacy tension in society prevailed all over the country. The new attention on privacy was different from the traditional one because a new living environment brought previously inexperienced conflict on private and personal lives in an industrialized and urbanized society. Throughout the nineteenth century, some significant economic, societal, and cultural changes have transferred a traditional society into a modern one: the broad industrialization, the rapid urbanization, the rise of a market economy, the improved leisure and literacy, and the technological innovation. These factors have resulted in new privacy tensions. In addition, the newspapers with the extensive circulation and commercialism of their content were the new weapon of privacy invasion at that time. As a result of the transition from traditional society to new modern society, the privacy that was undervalued or sometimes ignored in a former society has been recognized as one of the precious human rights in social life. The new face of privacy was emerging on the surface of history as the wave of a new society was coming into the nation gradually through the late nineteenth century.

Privacy tension as an apparent and serious issue of society appeared as the structure of the nation was transformed through the second half of the nineteenth century.

The main drive of this changing landscape came from the conversion of economic and social structure all over the country. The whole nation was moving into a new industrial society from an agricultural one as time went by. Powered with the availability of capital resources, an effective transportation system, new sources of power, and a wealth of mechanical inventions, the industrial revolution was under way. Factories appeared everywhere and manufacturing workers flooded into cities, and as a result large cities grew throughout the nation.

Mobilization of population nationwide was one of the changes of industrialized social structure. People living in the rural areas moved into the big cities where rapid industrialization needed more factory laborers. In American history, urbanization became an important factor in national life. Just as the plantation was the typical outcome and the visible symbol of the antebellum Southern system, the growth of cities was the consequent phenomenon of the new industrialism.⁵⁹ In 1830, there were only 26 cities having at least 8,000 inhabitants. However, the wide-spread manufacturing and the extension of the railway system brought considerable concentration to the urban population. In 1860, there were 141 cities in the nation, and in 1890 the figure had risen to 547. Out of 100 Americans, in 1830 only 6.72 persons were city dwellers; in 1860, 16.13 persons, and in 1890 the percentage was 29.20 persons. By 1900 that figure had

⁵⁹ Arthur Meier Schlesinger, *The Rise of the City: 1878-1898* (New York: The Macmillan Company, 1933), 78-120.

risen to 32.9 percent of a total population of 76 million—nearly one out of every three Americans was living in crowded urban areas.⁶⁰

In addition to the rural population flowing into urban areas, immigrants after the Civil War caused the population boom in large cities that demanded more labor.⁶¹ Immigrants from Europe, French Canada, Mexico, and the Orient flowed into America in hope that settlement in big cities under dire need of factory workers would give them a job and enable them to live better.⁶² This immigrant labor provided the means of enlarging established manufacturing centers, and cities became more populated. People crowded together in tenements as cities were growing, and consequently the physical possibility for invasion of privacy was rising as well, due to population density. The physical density of the urban communities has made individual privacy a thing of the past.

In large cities, privacy was threatened not only by the physical density, but also by the cultural differences of crowded people who came from diverse regions including foreign countries. More specifically, the gravitation of the population toward urban areas brought the heterogeneous circumstances that resulted from the influx of diverse racial backgrounds, especially from the immigrants of Europe. The mixture of different life styles and the growing curiosity about other groups in urban communities posed another possibility to endanger the preservation of privacy.

⁶⁰ Adna Ferrin Weber, *The Growth of Cities in the Nineteenth Century: A Study in Statistics* (Ithaca, New York: Cornell University Press, 1963), 20-40; Charles N. Glaab, *The American City: A Documentary History* (Homewood, Illinois: The Dorsey Press, 1963), 180-187.

⁶¹ United States Bureau of the Census, Ben J. Wattenberg, *The Statistical History of the United States: From Colonial Times to the Present* (New York: Basic Books, 1976), 105-108.

⁶² Constance McLaughlin Green, *The Rise of Urban America* (New York: Harper & Row, 1965), 97-98.

In the colonial era, the population had a homogeneous culture. On the base of the Anglo-Saxon traditions that had been affected by the Protestant morality, the accepted habits, laws, backgrounds, tastes, and customs were essentially very similar.⁶³ People had little curiosity at all to find out more about another's personal beliefs and activities. By the era of 1890s after a century passed, however, it was very clear that as a result of foreign immigration and Negro emancipation, the population of America was no longer homogeneous. Immigrants with diverse races and nationalities brought different ideas, views, religions, and backgrounds into America.⁶⁴ Thomas O'Connor explains this curiosity about other people, especially in overpopulated urban communities:

Curiosity, fascination, repugnance, fear, sympathy, greed, hostility, love, hate, and the thousand-and-one other conflicting emotions which affect people living in close association with one another—especially people of different races, creeds, nationalities, and economic levels—created a desire to know more and more about the intimate details of the lives, the actions, the habits, the customs, the thoughts, and the activities of those about them.⁶⁵

The condition of living in crowded cities brought great concerns and curiosity about neighbors and seldom allowed individuals to be let alone from others' sight. People were more and more subject to the invasion of privacy that no longer was secure in populated city life.

In sum, industrialization and consequent urbanization of America led to a new and different society. Compared with the typical communities of rural areas in the first

⁶³ Ralph Henry Gabriel, *The Course of American Democratic Thought*, 2nd ed. (New York: The Ronald Press Company, 1956), 26-39.

⁶⁴ Oscar Handlin, *The Uprooted* (New York: Grosset & Dunlap, 1951), 144-169.

⁶⁵ Thomas H. O'Connor, "The Right to Privacy in Historical Perspective," *Massachusetts Law Quarterly* 53 (June 1968): 109.

half of the nineteenth century, these new communities of urban areas in the second half of the nineteenth century had more physical density and diverse life styles in daily life. Living became more of a spectacle of watching strangers in the streets, reading about them in the newspapers, dealing with them in shops and factories and offices. Many people living in these new circumstances experienced privacy tensions due to the narrowed living boundary and the natural inquisitiveness of neighbors having different backgrounds, life styles and cultures.

3.2 Privacy and Newspapers with Modern Business Practices

Along with the demographic transformation of America due to the living circumstances in the densely populated districts of big cities, modern business practices of newspapers with the aid of technological innovations brought a new shape to privacy. The development of several technologies enabled newspapers to increase the tremendous circulation and to cut production costs as the scale of their market became enlarged. The circulation of newspapers was getting larger and larger on the grounds of the economic principle; the larger the size of a market gets, proportionally the more profit the press business earns by reducing the fixed expenses per copy. In particular, the appearance of big cities was an excellent condition to mass-circulate newspapers in a cost-efficient manner. By the last decade of the nineteenth century, most people in big cities could afford newspapers with relatively inexpensive prices, only one or two cents, than ever before. On the other hand, the space of newspapers was continuously enlarged due to the innovations of newspaper production and the reduced production costs. This enlarged

space of newspapers was replete with the very private details about the public figures and significant individuals as well. The competition of most newspapers to secure large circulation instigated sensationalism to attract the eyes of a mass audience. As a result, privacy tension became higher as newspaper readership increased.

3.2.1 Extensive newspaper circulation with technological innovations

The newspaper industry through the nineteenth century continued to extend its market in the nation. It was the newspaper technologies that contributed to the growth of newspaper circulation by producing papers more and faster in a given time. After the Civil War, competent newspaper business managers were very eager to introduce enormous technological advantages in production for economically and efficiently achieving mass circulation in metropolitan cities. The technological innovations made qualitative progress of newspaper production in diverse ways.

Paper and press improvement dominated the changing technology of newspapers during the 1860s and 1870s.⁶⁶ The adoption of stereotyping to newspaper production allowed editors to vary their makeup styles, to incorporate multi-column advertisements, and to increase the production speeds because additional stereotypes could be made. Another major change came with the development of the web-perfecting rotary press. This machine using stereotype plates allowed printing on both sides of the paper. The

⁶⁶ Corban Goble, "Newspaper Technology," in *History of the Mass Media in the United States, An Encyclopedia*, ed. Margaret A. Blanchard, 458-460 (Chicago: Fitzroy Dearborn Publishers, 1998).

newsprint was rolled and then the presses folded the pages and trimmed them as they came off the press.

Paper costs declined in the 1870s due to the availability of ground wood pulp replacing the use of more expensive rags. Chemical wood pulp reduced directly and significantly the price of newspapers. As the cost of newspaper space declined, publishers could increase the size of their editions and add more use of editorial cartoons, illustrations, and large headlines.

Other technologies also facilitated the improvement of newspaper production. Electricity was applied to presses, stereotyping, and machine-type through the process of newspaper production and made it more efficient and speedier. The invention of the telephone in 1877 replacing the telegraph helped newsrooms to gather the local and suburban news without delay.⁶⁷ The use of photographs in newspapers expanded as well, both in black and white, and in color.

Typewriters reduced composing costs in the 1880s because compositors no longer had to decipher the handwritten scrawl of reporters and editors. Linotype, invented by Ottmar Mergenthaler and first installed at the New York Tribune in 1886, combined the casting and composition processes into one machine having broken the composition bottleneck. The metal typesetting machine used a 90 character keyboard to assemble brass character matrices at once on the line, which the operator justified by the use of an

⁶⁷ Alvin F. Harlow, *Old Wires and New Waves: The History of the Telegraph, Telephone, and Wireless* (New York: D. Appleton-Century Company, 1936), 364-404.

adjustable spaceband key.⁶⁸ This allowed more high-speed, low-cost, and high-quality composition than the Monotype machine in which operators placed down one letter, punctuation mark or space at a time.⁶⁹

Owing to the newspaper technologies, the commercial press with large circulation spread out in major cities all over the nation during the ten years from 1886 to 1895. At that time, five changes in technology had a profound influence: the web-fed rotary press, electrically run machinery, wood-based white paper, typesetting machines, and halftone engraving.⁷⁰ It was the innovation in newspaper technologies that enabled publishers to produce large, two-cent or even one-cent newspapers, which brought so called new journalism or popular journalism to develop. A new generation of publishers could take advantage of reducing prices to reach a vast range of readership not previously envisioned. The profit driven business of newspapers pursuing mass circulation was by and large successful because they draw the revenue from the mass subscribers and advertising as well.

In accord with the growth of newspaper technologies, the circulation of newspapers rapidly increased. Between 1870 and 1900, America doubled its population and tripled the number of its urban residents. During the same 30 years the number of daily newspapers quadrupled, and the number of copies sold each day increased almost sixfold. The number of all types of dailies increased from 574 in 1870 to 2226 in 1900.

⁶⁸ Then, process proceeds like this: “Molten lead is then forced into the molds, and the entire line is cast as one piece of metal or slug (hence the generic name linecaster). The cast line is then placed on the galley tray, and the individual matrices are automatically distributed back to their places.” Richard Eckersley et al., *Glossary of Typesetting Terms* (Chicago: The University of Chicago Press, 1994), 62-63.

⁶⁹ Carl Schlesinger, *The Biography of Ottmar Mergenthaler: Inventor of the Linotype* (New Castle, Delaware: Oak Knoll Books, 1989), 1-75.

⁷⁰ Ted Curtis Smythe, *The Gilded Age Press, 1865-1900* (Westport, Connecticut: Praeger, 2003), 123-148.

Circulation totals for all daily publications rose from 2.6 million copies in 1870 to 15 million in 1900.⁷¹ Ted Smythe gave us a succinct summary on the state of newspapers and technology by the end of 1895:

The metropolitan press had adopted the new technologies to increase speed of production, reduce costs, and gain a competitive edge through price cutting, illustrations, and active news gathering. Most of the important technical development had occurred by the end of 1895. The rest would be refinements and improvements, though editors had to learn to use the technologies efficiently and effectively.⁷²

The last decade of the nineteenth century experienced not only the largest number of newspapers, but also the extensive circulation of metropolitan newspapers, promoted by the technological innovations.

3.2.2 Business practices of newspapers

The huge wave of societal and economic changes in the second half of the nineteenth century reshaped the American newspaper. Within the newspaper industry, particularly after the Civil War, new ideas about the role of the press in society altered the economic structure and newspaper content. Newspapers, sold for a penny by the 1890s in the metropolitan areas, were generally large circulation and 8 or 12 page dailies that usually kept their distance apart from political affiliation, which was very common in the era of the politically supported press.

⁷¹ Michael Emery and Edwin Emery, *The Press and America: An Interpretive History of the Mass Media*, 8th ed. (Boston: Allyn and Bacon, 1996), 158-159.

⁷² Ted Curtis Smythe, 143.

Contrary to the partisan papers that already became mass circulation newspapers by appealing to an expanded electorate, the penny papers in achieving mass circulation began a new era of commercialism by relying on the support of mass subscribers and advertising revenues rather than individual politicians and political parties. The penny press intended at the outset to be politically neutral.⁷³ For example, James Gordon Bennett, the founder of New York Herald in 1835 had no desire to become involved in politics. The first issue of this newspaper declared its editorial policy that “we shall support no party, be the organ of no faction or coterie, and care nothing for the election of any candidate from President on down to constable.”⁷⁴

From the appearance of the new journalism of the 1880s, with the support of newspaper technologies and tremendous advertisements,⁷⁵ newspapers started detaching a strong tie with political parties. Politics no longer occupied the main focus of news. The central motive of metropolitan newspapers was the immediate satisfaction of the largest number of people. Thanks to the growth of literacy and increased education at that time, more people became interested in the doings of their neighbors as well as the affairs of the larger world.⁷⁶ Taking advantage of the curiosity of people, newspapers beyond politics extended the coverage of a diverse mix of local, regional, and national news and features on broader topics much like today: business, crime, accidents, fires, divorce,

⁷³ John Nerone, “Penny Press,” in *History of the Mass Media in the United States, An Encyclopedia*, ed. Margaret A. Blanchard, 503-505 (Chicago: Fitzroy Dearborn Publishers, 1998).

⁷⁴ Guido H. Stempel III, *Media and Politics in America: A Reference Handbook* (Santa Barbara, California: ABC-CLIO, 2003), 8.

⁷⁵ Daniel Webster Hollis III, “New Journalism,” in *The Media in America*, 170-171 (Santa Barbara, CA: ABC-CLIO, 1995).

⁷⁶ Edward Shils, “Privacy: Its Constitution and Vicissitudes,” *Law and Contemporary Problems* 31, no. 2 (Spring 1966): 288-292.

suicide, labor, education, religion, sports, inventions, disease, weather, books, theater, music, fashion, recipes, and so on.⁷⁷ With a price of one cent and sensational content, newspapers were aimed at the masses, not the elite or upper class. Having escaped from the tutelage of government and parties, instead they fell under the tutelage of the masses. They had to find “support and profit in serving the whims and wishes and curiosity of the people.”⁷⁸

The modernized business practices of the press and the consequent commercialization of news in the late decades of the nineteenth century reflected three critical changes in newspaper environment: its finances, the vision on the press, and the practical operations of newspapers.⁷⁹ Above all, the providers of finances for newspapers ruled the nature of the press. Political parties in the antebellum era provided financial support to many newspapers. In return, the papers bolstered their party. However, advertisers have replaced the financial role of political parties. The press carried advertisements to readers and was supported in large part by the revenues of advertising. Newspaper producers detached from political parties considered their readers as consumers, not voters at all, so that they went far beyond the world of politics and voting. Targeting new readership that required all kinds of attractive stories around readers, newspapers tried to catch the daily interest of their potential readers. Practices of newspapers advanced commercialism and sensationalism. Costs of newspapers including

⁷⁷ Gerald J. Baldasty, *The Commercialization of News in the Nineteenth Century* (Madison, Wisconsin: The University of Wisconsin Press, 1992), 3.

⁷⁸ Walter Lippmann, “Two Revolutions in the American Press,” *The Yale Review* 20, no. 3 (March 1931): 436.

⁷⁹ Gerald J. Baldasty, 4-5.

the establishment of equipment, operation, and increase of staff for the press grew enormously as big city newspapers developed. These emphasized the business aspects of newspapers, so that they became more commercialized, and news became more suitable to commodities, shaped and marketed with an eye for profit.

The commercialization of newspapers through the last quarter of the nineteenth century has been based on some degree of autonomy against political parties and government by obtaining the commercially profitable support of a large body of readers. The independent press, detached from political parties, had to find a new source of revenue. Replacing the role of political parties, advertisers were the most important supporters of the commercialized press. Since the advent of the penny press in the 1830s, the size of readership has rapidly increased, and advertisers realized that newspapers were a means of reaching a mass audience on a daily basis. In fact, as national and regional brands for goods mass produced by the industrial revolution began to develop in the 1880s, newspaper advertising became increasingly important and a natural choice for advertisers.⁸⁰

It is not surprising that by 1890 most metropolitan newspapers had restructured their business operations in order to seek and attract advertising. In response to the demands of advertisers for circulation, many publishers went to great expense to build larger circulation under the consideration that losing money in newspaper sales could make up the difference with advertising revenues. In fact, the newspaper sells itself first to the public at a price usually below cost, but obtains circulation and then sells access to

⁸⁰ Mary Alice Shaver, "Newspaper Advertising," in *History of the Mass Media in the United States, An Encyclopedia*, ed. Margaret A. Blanchard, 433-434 (Chicago: Fitzroy Dearborn Publishers, 1998).

the public market, as reflected in its circulation, to the advertisers who desire to inform the public of their wares and services. The balance of cost and operating margin are covered by this advertising income.⁸¹

New journalism that oriented toward a profit and relied more on advertisers began to intensify and promote circulation figures.⁸² Vigorous competition of newspapers in the big cities demonstrated that the newspaper business could be profitable. Even though the reducing cost of newsprint and increasing advertising patronage helped to keep the price lower, the newspapers' competition for larger circulation ignited the price war. In the 1880s publishers in metropolitan areas dropped prices from three or four cents to two cents a copy, and again in the 1890s they cut prices to one cent. Price wars greatly affected the sources of newspaper revenues. Income from subscriptions and street sales declined. Instead publishers were forced to rely more and more upon advertising to make up the difference.⁸³ From 1879 to 1914 advertising increased from 49.2 percent to 64.9 percent of total newspapers' income.⁸⁴ More circulation brought more advertising income. Such income could compensate for the newspapers' sale even at a loss and eventually provide a profit. To draw more attention of advertisers, newspapers had to secure large circulation. Ultimately the typical daily newspapers in metropolitan areas existed to pursue profits by means of news service to a mass audience.

⁸¹ John Scott Davenport, *Newspaper Circulation: Backbone of the Industry* (Dubuque, Iowa: WM. C. Brown Company, 1949), 1-2.

⁸² Ted Curtis Smythe, "Newspaper Circulation," in *History of the Mass Media in the United States, An Encyclopedia*, ed. Margaret A. Blanchard, 436-438 (Chicago: Fitzroy Dearborn Publishers, 1998).

⁸³ Ted Curtis Smythe, "The Advertisers' War to Verify Newspaper Circulation, 1870-1914," *American Journalism* 3, no. 3 (1986): 167-180.

⁸⁴ Alfred McClung Lee, *The Daily Newspaper in America* (New York: The Macmillan Company, 1937), 748-749.

3.2.3 Commercialism and sensationalism of mass circulated newspapers

The advent of mass circulated newspapers revolutionized newspaper business practices into more commercialism, a profit driven enterprise. In a trend of commercialism of newspapers, news has had a function of commodities that were traded in a newspapers market. News was packaged for a large and diverse audience. Newspapers provided political, economic, and social information on all levels, and private information, focusing on the affairs of the common person and debunking the affairs of the elite and privileged. In the 1890s, journalism had two distinct trends on news. The first trend valued more information, pursued by objectivity, accuracy, and detached thoroughness as exemplified by the *New York Times*. The second gave more space to the story, described by its meaning, entertainment, and emotional compassion as practiced by *New York World* and *New York Journal*. The informational journalism appealed largely to the educated and wealthy class while the sensational journalism such as Pulitzer's *World* and Hearst's *Journal* at that time appealed to the uneducated middle and working class.⁸⁵

The competition of Pulitzer and Hearst in the late 1890s especially accelerated sensationalism to an extreme. For the purpose of gaining readership, newspapers were designed to attract readers with more visuals. Headlines were larger and bolder so that people bought newspapers and read stories. Their competition included raiding each others' staffs and creating a brand of sensationalism known as "yellow journalism,"

⁸⁵ Michael Schudson, *Discovering the News: A Social History of American Newspapers* (New York: Basic Books, 1978), 88-120.

allegedly named for the splash of color on a comic character, the Yellow Kid, whose creator they fought over.⁸⁶ The sensational journalism identifying itself as yellow journalism made stories a kind of commodity for the masses with a sensational appeal to the emotions.⁸⁷

Metropolitan publishers who sought to reach a mass audience developed the newspaper content to a greater capacity for sensationalism. They stimulated readers with entertaining and visual newspapers. The evidence of sensationalism for newspapers confirmed subjects of news and apparent facets of treatment to attract the eyes of readers. Identifiable subjects of news specified crimes, disasters, scandals, monstrosities, and the like. Identifiable techniques for displaying news, on the other hand, showed the screaming headlines and other graphic extremes of the yellow press of the 1890s.⁸⁸ The development of technologies in the new journalism era promoted and extended the use of headlines and graphic illustrations that was restricted due to technical limitations in the previous period.⁸⁹ For example, the *Dallas Morning News* front page had the headline, “MYSTERIOUS MURDER Body of a Woman Wrapped in a Table Cover and Carpeting HAD BEEN STRANGLED.” Then, the writer described:

The bundle in which the remains were found was bound at either end with pieces of clothesline, leaving the middle portion somewhat loose. Patrolman Kasmir put his hand inside and drew out the lower part of a human leg. Around her neck was tied in a double knot a long piece of cheese cloth. This had been tied so tightly

⁸⁶ Michael Buchholz, “Yellow Journalism,” in *History of the Mass Media in the United States, An Encyclopedia*, ed. Margaret A. Blanchard, 709-710 (Chicago: Fitzroy Dearborn Publishers, 1998).

⁸⁷ Sidney Kobre, *The Yellow Press and Gilded Age Journalism* (Florida State University, 1964), 1-2.

⁸⁸ Warren Francke, “Sensationalism and the Development of 19th-Century Reporting: The Broom Sweeps Sensory Details,” *Journalism History* 12, no. 3-4 (Autumn-Winter 1985): 81.

⁸⁹ Warren T. Francke, “Sensationalism,” in *History of the Mass Media in the United States, An Encyclopedia*, ed. Margaret A. Blanchard, 601-602 (Chicago: Fitzroy Dearborn Publishers, 1998).

that it had caused strangulation and had forced the tongue to protrude from the mouth... Her legs had been cut off just above the knees, and one lay on top of the body, while the other was found underneath the body. Both members had been hacked off with a sharp ax or a butcher's cleaver, and pieces of ragged skin and flesh were hanging from the dismembered legs.⁹⁰

The motives of sensationalism for a mass audience were derived from the context of a profit-oriented market economy. Commercialization forced newspapers to entertain their readers with whatever manners they could take. In this sense, sensationalism gave readers what they wanted rather than what they needed in order to care about the circulation of papers. Newspapers stimulated and inflated the curiosity of the public. The atmosphere of curiosity about other people, and of interest in different cultures at large cities, caused the newspapers to seek out details of the private lives of individuals and groups.⁹¹ New developments in technology such as printing, publishing, and photography at this time helped newspapers to satisfy the demands of public curiosity.⁹² As a result, the large headlines, scary heads, and sensational illustrations appeared more in the outward appearance of newspapers. The content in the papers emphasized entertaining stories such as crime and invasion of privacy to attract readers. Especially, the aggressions of a type of unscrupulous journalism by reporters and photographers in

⁹⁰ *Dallas Morning News*, "Mysterious Murder," p. 1, April 1, 1895. Quoted in Marvin Olasky, "Late 19th-Century Texas Sensationalism: Hypocrisy or Biblical Morality?" *Journalism History* 12, no. 3-4 (Autumn-Winter 1985): 96.

⁹¹ Robert Ellis Smith, *Ben Franklin's Web Site: Privacy and Curiosity from Plymouth Rock to the Internet* (Providence, RI: Privacy Journal, 2000), 102-120.

⁹² A study on the relationship between the development of photography and the right of privacy can be found in: Robert E. Mensel, "'Kodakers Lying in Wait': Amateur Photography and the Right of Privacy in New York," *American Quarterly* 43, no. 1 (March 1991): 24-45.

competition for a story and a picture led to more vulnerability and infringements of privacy.⁹³

By the end of the nineteenth century newspapers reached extravagant size and filled the content with intimate matters in greater detail. Private matters were frequently revealed to readers and privacy was often destroyed. Edwin Lawrence Godkin, editor-in-chief of the New York *Evening Post* in 1881-1899, harshly criticized leading characteristics of newspapers at that time as “childish hilarity, irreverence, and, we may add, childish inventiveness.” And then he added the harm of privacy invasion; “there is hardly any one, rich or poor, who has not suffered from ‘the newspapers,’ and especially those who have passed through some notorious sorrow or misfortune.”⁹⁴ The commercialization and sensationalism of newspapers made the individual right of privacy more endangered than ever before.

3.2.4 Gossip as an invasion of privacy in newspapers

The chief enemy of privacy in human life is inquisitiveness about other people and their affairs. Before the era of the press, personal gossip satisfied that kind of curiosity about other people. It relied on the oral communication by means of mouth to mouth. Gossip did not go far away and was confined to the immediate circle of the victim’s acquaintances. Therefore, the speed of gossip was usually very slow, and the boundary of gossip was very limited to those who know well the victims of gossip. A

⁹³ Roscoe Pound, “Interests of Personality,” *Harvard Law Review* 28, no. 4 (Feb. 1915): 363.

⁹⁴ E. L. Godkin, “Journalistic Dementia,” *The Nation* 60 (March 14, 1895): 195.

man rarely heard of oral gossip about him that made him ridiculous, and it seldom hurt his social reputation.

The advent of the newspapers changed several things about gossip. The business of newspapers converted curiosity into a marketable commodity that became an effectual demand in the press industry.⁹⁵ Gossip about private individuals was then printed and went hundreds or thousands of miles away in a day to those who could reach newspapers far beyond a victims' domestic circle. Oral gossip in a traditional way spreads private information by means of human dissemination, which is limited, incomplete, or misleading revelation, while printed gossip in a newspaper era proliferates the personal information via publication, which is unlimited, complete, or truthful disclosure. Gossip in a traditional way permits a person to maintain a public face, but dissemination of gossip via newspapers converts personal or domestic matters into an open or public one.⁹⁶ Therefore, gossip in newspapers as a commodity really brings great pain to victims who learn exactly what is said about them in all its details.

The negative effects of newspaper gossip cannot compare with that of an idle gossip. Warren and Brandeis in their "The right to privacy" in 1890 deplored the evil influence of gossip made by journalistic practice: "Modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury... when personal gossip attains the dignity

⁹⁵ E. L. Godkin, "The Rights of the Citizen, IV: To His Own Reputation," *Scribner's Magazine* 8 (July-Dec. 1890): 66.

⁹⁶ Ferdinand Schoeman, "Gossip and Privacy," in *Good Gossip*, ed. Robert F. Goodman and Aaron Ben-Ze'ev, 79-82 (Lawrence, Kansas: University Press of Kansas, 1994).

of print, and crowds the space available for matters of real interest to the community.”⁹⁷

Gossip as a commodity produced by commercialized newspapers unnecessarily exposed personal privacy to the public and brought victims mental damage and pain.

The newspaper as a mass medium conveying news and stories to the public became a main invader to jeopardize a right to privacy that meant solitude, a right to be let alone in a traditional sense. As the metropolitan newspapers became more commercialized businesses to attract readers, they provided sensational and amusing stories that consequently exposed much of people’s lives. The appropriate audience of commercialized newspapers usually belonged to the middle and working classes who were relatively a new literate population at the end of the nineteenth century. This new and large class of newspaper readership had social and cultural curiosity about their urban world and was willing to pay for newspapers serving that purpose.⁹⁸ They enjoyed reading all the local gossip collected from a much wider area, which they used to hear at the tavern, the store, and the church door.⁹⁹ The readers were interested in public political matters or political affairs such as the knowledge of the center of society where they could not manage to divert their interests or the scandalous doings of the mighty. This inclination to know these things came from a desire to be in proximity to the mighty, the famous, the glorious, the authoritative, and to derogate them at the same time.¹⁰⁰

⁹⁷ Samuel D. Warren and Louis D. Brandeis, “The Right to Privacy,” *Harvard Law Review* 4, no. 5 (Dec. 1890): 196.

⁹⁸ William J. Thorn, *Newspaper Circulation: Marketing the News* (New York: Longman, 1987), 43-44.

⁹⁹ E. L. Godkin, “Newspapers Here and Abroad,” *North American Review* 150 (February 1890): 198-199.

¹⁰⁰ Edward Shils, “Privacy: Its Constitution and Vicissitudes,” *Law and Contemporary Problems* 31, no. 2 (Spring 1966): 292-294.

To attract these kinds of ordinary people, newspapers became more commercialized and sensationalized. Moreover, the excessive competition for hunting an exciting story caused reporters to frequently penetrate the private sphere of people and sometimes disregard the violations of privacy. Gossip about the doings of the rich and famous easily stimulated the curiosity of the rest of the people.¹⁰¹ Godkin criticized the wicked aspects of gossip that filled sensational journalism: A reader “too often finds that the bitterest denouncers of the bad newspapers are familiar with everything they contain every day, repeat their gossip, enjoy their ‘digs,’ and especially the bits of blackguardism with which they annoy decent people. Here is the root of the evil. There is no surer reflex of the popular taste than journalism.”¹⁰² No matter how victims felt the invasion of their privacy, the public furthermore continued to have their interest in gossip. For those in privileged positions the gossip in newspapers was very negative and disgusting; on the contrary, it was very informative and interesting for others who eagerly wanted to know different groups or communities in society.¹⁰³ In reality, most people can afford newspapers at a cheaper price, and newspapers gave ordinary readers more intensive attention to the gossip columns that revealed personal lives of wealthy and successful people.¹⁰⁴

¹⁰¹ Hazel Dicken-Garcia, *Journalistic Standards in Nineteenth-Century America* (Madison, Wisconsin: The University of Wisconsin Press, 1989), 190-196.

¹⁰² E. L. Godkin, “Journalistic Dementia,” 196.

¹⁰³ Robert Post, “The Legal Regulation of Gossip: Backyard Chatter and the Mass Media,” in *Good Gossip*, ed. Robert F. Goodman and Aaron Ben-Ze’ev, 70-71 (Lawrence, Kansas: University Press of Kansas, 1994).

¹⁰⁴ Richard A. Posner, “John A. Sibley Lecture: The Right of Privacy,” *Georgia Law Review* 12, no. 3 (Spring 1978): 396-397.

With the excesses of the press, newspapers took advantage of curiosity about people's lives and moreover created this interest in readers for more demand. Newspaper gossip sustained a public of millions of people who were interested in others' business, sometimes at the expense of someone's privacy. As Warren and Brandeis well explained, "the press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery."¹⁰⁵ The press gained more publicity through increasing circulation, and the extension of publicity exposed more the private lives of individuals.

3.2.5 Privacy and the freedom of the press

People recognized a new type of privacy tension, which was invaded mostly by newspapers through late decades of the nineteenth century. As newspaper business developed into commercialism with a large circulation, stories on individual affairs frequently brought conflict or tension to individual rights of privacy. The justification for the newspapers' invading privacy was the freedom of the press in the First Amendment¹⁰⁶ that guaranteed searching and reporting the objective aspects of important events for the whole society. Newspapers are responsible for serving the public's right to know by

¹⁰⁵ Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4, no. 5 (Dec. 1890): 196.

¹⁰⁶ The First Amendment of the United States Constitution provides; "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

publishing newsworthy information for the public or general interest.¹⁰⁷ In the defense of newsworthiness such as public interest, public figure, and public record, newspapers have found a comfortable refuge in which they could escape the limits of privacy violations.¹⁰⁸ Providing the pro-social function to the public information, newspaper institutions have enjoyed the privilege of unrestricted investigation and reporting under the freedom of the press, which was enshrined in the First Amendment of the federal Constitution.¹⁰⁹

Privacy assumes retreat from the public gaze such as seclusion and anonymity, which is free from the interference of an inquisitive public to maintain private personality.¹¹⁰ In the interests of the common welfare of an industrialized society, the institutions of mass communications often intrude on the privacy of individuals.¹¹¹ For example, the public interest in a newsworthy figure, famous or notorious, frequently does not allow the person to be let alone. Newspapers always have the possibility to intrude on individual affairs that belong to pure individual domain. The mass publication of newspapers inevitably shines on the sphere of the individual to the world. Most privacy violations by newspapers occur when they occasionally serve the publisher's interest that often invokes public curiosity, instead of the public or general interest that they always

¹⁰⁷ Edward J. Bloustein, "The First Amendment and Privacy: The Supreme Court Justice and the Philosopher," *Rutgers Law Review* 28, no. 1 (Fall 1974): 51-58.

¹⁰⁸ Don R. Pember, *Privacy and the Press: The Law, the Mass Media, and the First Amendment* (Seattle: University of Washington Press, 1972), 238-243.

¹⁰⁹ Anita L. Allen, "Privacy versus the Public's Right to Know," in *The Concise Encyclopedia of Ethics in Politics and the Media*, ed. Ruth Chadwick, 252 (San Diego: Academic Press, 2001).

¹¹⁰ Herbert Spencer Hadley, "The Right to Privacy," *Northwestern Law Review* 3, no. 1 (Oct. 1894): 1-2.

¹¹¹ Norman F. Cantor, *Privacy in Western Civilization*, A Report Submitted to the Association of the Bar of the City of New York, Special committee on Science and Law (October 11, 1963): 104-106.

defend.¹¹² In reality, it is very difficult to distinguish the public interest and the publisher's interest (consequently the privacy violation) because the borderline between the private and public sphere by and large has a common denominator. Newspapers working for the public interest at a societal level are usually against the protection of individual domain.

Pursuing the public interest, newspapers continue to threaten and invade the individual right of privacy. When newspapers have trouble with privacy, society prefers the role of newspapers to privacy because individual or private rights often yield to public interest. Based on the grounds that the safeguarding of a free press is of paramount public importance, most courts acknowledge that "the right of privacy does not prohibit the publication of news and pictures in connection with items of legitimate public interest."¹¹³ The decisions of the courts have given more priority to news for the public than privacy for the individual because the circulation of information keeps a society informed for the public good.¹¹⁴

The freedom of the press has strongly bolstered and protected newspapers from invading the individual right of privacy for the sake of public interest.¹¹⁵ Newspapers as an agent of serving the public's right to know can make the curiosity of the public into a commercial motive to sell gossip as commodities. Newspapers, as the most important

¹¹² Edward J. Bloustein, "Privacy, Tort, and the Constitution: Is Warren and Brandeis' Tort Petty and Unconstitutional As Well?" *Texas Law Review* 46, no. 5 (April 1968): 611-629.

¹¹³ Louis Nizer, "The Right of Privacy: A Half Century's Developments," *Michigan Law Review* 39 (1941): 540.

¹¹⁴ Samuel H. Hofstadter, *The Development of the Right of Privacy in New York* (New York: The Grosby Press, 1954), 40-41.

¹¹⁵ Theodore L. Glasser, "Resolving the Press-Privacy Conflict: Approaches to the Newsworthiness Defense," in *Privacy and Publicity*, ed. Theodore R. Kupferman, 18-24 (Westport, CT: Meckler, 1990).

mass medium in late nineteenth century, provided information to the public in a societal level, but sometimes created tension and conflict of privacy at the individual level that the previous era did not experience.

3.3 Privacy and Newspapers in the Late Nineteenth Century

The social concerns over privacy dramatically increased through the growth of big cities where people crowded together in tenements. Due to the physical density in large cities, people had little room to enjoy their own private lives. Psychological curiosity about other people in populous areas also increased the threat to privacy. In addition to the density of living place, perhaps the most increasing menace to privacy came from the development of newspapers. Newspapers overcame the limitations of human capacity to give information. They could reach a mass audience at a single time and provide a public sphere where information was shared. Once stories are in newspapers, they no longer belong to certain individuals or groups. In this sense, newspapers provide a sphere for the public in which newspapers convert private or personal affairs into public or common matters. As a mass medium, newspapers are working in what Denis McQuail calls the “anti-privacy” business that cannot preserve the personal sphere.¹¹⁶

With the creation of newspapers, a great number of people began to argue the right of privacy distinguished from the conventional one. In this sense, privacy had a

¹¹⁶ Denis McQuail, “Mass Media and Privacy,” in *Privacy*, ed. John B. Young, 180-182 (New York: John Wiley & Sons, 1978).

modern characteristic that was seldom recognized and sought in the days before newspapers. The newspapers were the most powerful institution that published private matters to the sphere of the community. Godkin argued in 1880 that “the press has no longer anything to fear from legal restriction of any kind, as regards its influence or material prosperity; while the community has a good deal to fear from what may be called excessive publicity, or rather from the loss by individuals of the right of privacy.”¹¹⁷ Warren and Brandeis clearly understood the reason for protecting personal privacy against the press that was guarded by its First Amendment rights. They proposed a countervailing right on the part of individuals, an explicit ‘right to privacy’ against the freedom of the press.¹¹⁸ The press posed the newest and greatest threat to privacy that wanted to remain in the state of being let alone out of social concerns.¹¹⁹

Edward Doan well pointed out the relationship of newspapers and privacy that “the demand for judicial recognition of the right of privacy parallels, almost exactly, the rise of the modern metropolitan newspaper with all its chromatic shades.”¹²⁰ In other words, the demand for legal protection of privacy paralleled the development of the highly competitive profession of news-gathering, photography, and its circulation. There was no doubt that the newspapers as an efficient means of mass communications became

¹¹⁷ E. L. Godkin, “Libel and Its Legal Remedy,” *Journal of Social Science* 12 (December 1880): 82.

¹¹⁸ Harvard Law Review Association, “The Right to Privacy in Nineteenth Century America,” *Harvard Law Review* 94 (1981): 1910.

¹¹⁹ David J. Seipp, *The Right to Privacy in American History*, Harvard University, Program on Information Resources Policy (July 1978), 66-71; Philippa Strum, *Privacy: The Debate in the United States Since 1945* (Fort Worth, Texas: Harcourt Brace College Publishers, 1998), 15.

¹²⁰ Edward N. Doan, “The Newspaper and the Right of Privacy,” *The Journal of the Bar Association of the State of Kansas* 5, no. 3 (Feb. 1937): 214.

a major and massive intruder on privacy when they conveyed sensational stories in great detail.

In the newspaper era, the personal affairs of people became a relevant part of the public information that the society needed to know in order to pursue its general interests. The protection from the unnecessary exposure of private life to the public, on the other hand, became one of the important rights of citizens in the days of newspapers. The construction of privacy concept was growing through the resistance to the indiscrete and reckless publication of newspapers about the personal life of individuals. In this sense, the concept of a right ‘to be let alone’ asserted the right of individuals to keep their affairs to themselves, and to decide for themselves to what extent they would be the subject of public observation and conversation.¹²¹ In the newspaper era, the core concept of privacy, ‘the right to be let alone,’ is to escape unwanted publicity and to be protected from the intervening of newspapers. The concerns of privacy concentrated on the domestic private life, replacing the previous personal boundary of privacy. In other words, the conventional right to privacy concerned the physical protection of the private boundary around body. Whereas, the new right to privacy in the newspaper era concerned the individual’s outward relationship to the public through mass media.

¹²¹ E. L. Godkin, “Libel and Its Legal Remedy,” 80.

3.4 Privacy in the Mass Media Era

The disclosure of personal life to the world became the main concerns of privacy in the mass media era. The publicity of personal life by mass media has not allowed the private sphere to remain as it was. The social function of mass media has shifted personal stories from the private sphere to the public sphere. Before the appearance of mass media, the publicity or visibility of social events in public domains was linked directly with the sharing of a common time and space.¹²² The social events in the public sphere always remained within the limitation of sight and hearing. To share the social events, people had to be physically present. However, mass media have changed the significance of physical presence in the experience of social events. Mass media can bring public events at home and people do not need to attend. The publicity provided by mass media has been no longer dependent on physical presence. The public sphere mediated by mass media is not bounded up with physical time and space, but rather it becomes connected with an arena of publicity created by mass media, which does not require physical presence.

The development of mass media has reconstituted the boundaries between private and public events. In general, a public event is visible and performed openly so that anyone can see or hear; by contrast, a private event is usually invisible and performed secretly in a restricted circle of people behind closed doors. In this sense, the private-

¹²² John B. Thompson, *Ideology and Modern Culture: Critical Social Theory in the Era of Mass Communication* (Cambridge, UK: Polity Press, 1990), 238-248.

public dichotomy has to do with visibility versus invisibility.¹²³ With the extension of co-presence, mass media brought new visibility, which was no longer limited to physical space and time. In this sense, the evolution of mass media has blurred the conventional distinction of the private and public sphere. The private lives of individuals can be turned into public events by being publicized through mass media; otherwise they would remain in secrecy and in the private sphere. The advent of newspapers, especially sensational ones as I mentioned earlier in this chapter, has converted personal affairs into public announcements. Consequently, newspapers publicize to the audience the private life that once could be preserved in the domestic circle.

Compared with the printing press, electronic media of communications such as radio and television facilitated further “space-time distancing,” which resulted in “the uncoupling of space and time” in the sense that communication between people no longer required both spatial presence and temporal simultaneity.¹²⁴ The nature of the electronic signal immediately transmits messages through wire or air as though there is real face-to-face communication. The simultaneity of message transmission by electronic media was detached from the spatial condition of common locality. Electronic media directly convey information to receivers, but print media deliver it through papers that cannot be live communication due to time delay. Electronic media have further eliminated the distance of time and space barriers in conveying their messages to audiences. In addition, electronic media extend their audiences. In general, print media tend to specify types of

¹²³ John B. Thompson, *Political Scandal: Power and Visibility in the Media Age* (Cambridge, UK: Polity Press, 2000), 33-41.

¹²⁴ John B. Thompson, *The Media and Modernity: A Social Theory of the Media* (Stanford, CA: Stanford University Press, 1995), 21-22. 31-37.

readers according to their demographic factors and concrete interests. Compared with print, electronic media tend to embrace people of all ages, sexes, educational backgrounds, professions, religions, and ethnic backgrounds.¹²⁵ Social events, which were yet largely inaccessible to many sectors of the population by print media, are now available through electronic media.

The simultaneous transmission of social events through electronic media has extended publicity to enlarged audiences in all areas of society. Electronic media have exposed many features of the backstage behaviors of individuals and concomitantly moved into a front region. In a front region or onstage where one's activity occurs in the presence of other persons, people accentuate some aspects of desirable behaviors and suppress other aspects of distasteful behaviors. In a back region or backstage where people do not pay much attention to their activities, the suppressed facts of their behaviors may appear.¹²⁶ The movement of back region behaviors into the front region inevitably brings the exposure of personal life, which is exchanged only among family members and close friends. In the electronic era, individuals and groups lose the exclusive access to a restricted area of their own back region. On the contrary, they gain more views of the back regions of other people and groups. Personal behaviors, which

¹²⁵ Joshua Meyrowitz, *No Sense of Place: The Impact of Electronic Media on Social Behavior* (Oxford: Oxford University Press, 1985), 91-92.

¹²⁶ Using the metaphor of drama, Erving Goffman explains that any person's behavior in a given setting can be broken down into two broad categories: front region, or onstage behavior and back region, or backstage behavior. Erving Goffman, *The Presentation of Self in Everyday Life* (Garden City, New York: Doubleday Anchor Books, 1959), 106-140.

were once kept in the backstage of social life, would emerge into the open onstage of public area.¹²⁷

Personal life becomes vulnerable as electronic media convey spontaneous and natural messages of a slice of personal life that is not comparable to printed messages. The age of electronic media is accustomed to the culture of exposure, which promotes many features of personal life into publicity. With the assistance of electronic media, society has evolved or devolved into a culture of “mediated voyeurism” that reveals images of and information about other people’s apparently real and unguarded personal lives, frequently at the expense of privacy.¹²⁸ Electronic media entertain audiences with the act of exposure in the exhibitionist society.¹²⁹ In the mediated society of electronic media, people’s expectations of privacy decrease and the expectations for watching others’ private life increase. Electronic media facilitate private lives of individuals to easily appear in the public sphere.

The publicity of mass media itself often risked the privacy of individuals who can keep their private life secret. In this sense, privacy in a mass media era means that personal life should not be disclosed to the public without one’s consent because publicity does not allow someone to remain in the private domain. As mass media appeared, publicity became the main threat to privacy. The extension of publicity by mass media easily transferred the formerly private sphere into the public sphere. The development of electronic media from print media intensified this tendency of expansion

¹²⁷ Joshua Meyrowitz, 93-114.

¹²⁸ Clay Calvert, *Voyeur Nation: Media, Privacy, and Peeping in Modern Culture* (Boulder, Colorado: Westview Press, 2000), 19-24.

¹²⁹ Charles J. Sykes, *The End of Privacy* (New York: St. Martin’s Press, 1999), 186-189.

of public sphere. Since the advent of newspapers provided a new concept of the public sphere that did not require physical presence, the exposure of private lives of individuals also was not limited to the physical boundary of human sight and hearing. The concept of privacy in the mass media era has added to the protection of exposure of personal lives.

The traditional meaning of privacy focused on the protection of individuals' boundary from the invasion of others such as solitude, seclusion, withdrawal, or the like 'to be let alone.' In addition to physical boundary, the new concept of privacy in the mass media age concerned on the protection of personal lives from the exposure by mass media. Thus, the meaning of enjoying privacy included individuals' decision on the disclosure of their personal lives to the public. The right of privacy means for individuals the right to decide how much and how little publicity about their private lives can be revealed to the world.

Chapter 4

PRIVACY AND THE INTERNET IN THE PRESENT AGE

4.1 Privacy Tensions and New Information Technologies

The advent of new information and communications technology in contemporary society provides individuals with many benefits and advantages to make our living conditions more convenient than ever before. While we are enjoying many positive aspects of these technologies, at the same time we are experiencing some negative ones. Among several tensions accompanied with the advances of information and communications technologies, privacy is a major concern because much of the information gathered and processed is information about individuals.¹³⁰

Information and communications technology has made possible a magnitude of data collection, storage, retention, and exchange previously unimaginable.¹³¹ The clearest nature of information technologies is the ability to multiply information. It is much easier to copy and transfer information with computer systems than to copy and hand in paper documents stored in filing cabinets with human labor. Moreover, digital technologies such as the Internet have made it possible to do this remotely from the other side of the world.

¹³⁰ Jeffrey Rothfeder, "The Internet Threatens Privacy," in *Technology and Society: Opposing Viewpoints*, ed. Auriana Ojeda, 118-126 (San Diego, California: Greenhaven Press, 2002).

¹³¹ Deborah G. Johnson, "Computer Ethics," in *Academy & the Internet*, ed. Helen Nissenbaum and Monroe E. Price, 155-157 (New York: Peter Lang, 2004).

Information technology is now transforming the traditional structure of living and work spaces by fast delivery of intellectual goods. In addition, it is transforming the conceptualization of these spaces and activities. In the process, traditional distinctions between private and public spaces, and between private and public realms of activity, are collapsing. Now privacy is no longer a concept related to private space or activity that is tied to a certain place, but instead it is closely relevant to information that travels to interlinked places beyond a specific place.

Networked information technologies make the current privacy problem different from the traditional one. Privacy relevant to formerly private places or spheres of activity can no longer be fitted into the new information technology age. Featured with the interconnectedness or network, the new information technology has promoted some trends that have transcended private places or spheres.¹³² For example, with a computer connected to the Internet, everyone can get the networked real time interaction with others at various locations.¹³³ Given the generalized connectivity of the Internet, the globalization of data flows removes geographical limitations worldwide. With the development of new information technology, the traditional concept of privacy tied to private space and activity has been made almost obsolete. As the importance of personal information has increased in the information society, privacy as a basic human right has moved concerns to the protection of invisible personal information from visible personal territory. In other words, privacy concerns no longer remain solely the protection of one's

¹³² Everett M. Rogers, *Communication Technology* (New York: Free Press, 1986), 9.

¹³³ Martin Hand and Barry Sandywell, "E-topia as Cosmopolis or Citadel: On the Democratizing and De-democratizing Logics of the Internet, or, toward a Critique of the New Technological Fetishism," *Theory, Culture & Society* 19, no. 1-2, (2002): 200-201.

space and the exposure of personal life, but extend to the protection of information about individuals in an environment of the information society.

The exploration of information and the importance of personal information have continuously increased the threat and invasion to privacy in the behavior of both commercial and government agents.¹³⁴ Commercial agents can easily collect and process an increased volume and variety of data about their customers, and governments about citizens. Privacy tensions become one of the main conflicts in the information society. It is important to examine the characteristics of privacy in the information society; why privacy becomes such an important matter in the information society; what the privacy tensions mean in the information society; who are the main players in the creation of privacy tensions; how the concept of privacy in the information society is different from the traditional one; and how we can solve this conflict in the information society. Through exploring these kinds of questions, I will diagnose the privacy tension in the right direction and suggest some guidelines to privacy problems.

4.2 Privacy in the Information Society

4.2.1 The importance of information in the information society

We are now living in a new form of society that has resulted from a technological revolution through the second half of the twentieth century. The advances in computers and telecommunications technology have been shaping a new kind of society. This

¹³⁴ Jeffrey Rothfeder, *Privacy for Sale* (New York: Simon & Schuster, 1992), 31-62. 124-152.

society is commonly referred to as ‘Post-industrial Society,’ ‘Information Society,’ ‘Society of Post-Fordism,’ ‘Postmodern Society,’ or ‘Network Society’ to contrast with the industrial society.¹³⁵ Even though the titles or names of these societies reflect the salient aspects of new societies, the primary social, cultural, and economic activity of these societies consists of massive production and distribution of information in a large scale, just as it was with material goods in the industrial society.¹³⁶

Scholars’ specific views depend on which aspects of the information society they emphasize, for example, the growth of information sector, the information explosion, or the information technology revolution.¹³⁷ However, it is indisputable that the information phenomena have been a leading focus on the evolution of a new emerging society expressed by an information-oriented society or information-featured time.¹³⁸ In fact, the largest portion of the modern economy is made up of information-related activities driven by information technology industries.¹³⁹ Employment patterns over decades well explained this phenomenon. The workforce in the manufacturing and agriculture sectors declined remarkably and moved to the service sector.¹⁴⁰ The information industry comprises a group of enterprises and organizations whose purpose is to develop the

¹³⁵ Darin Barney, *The Network Society* (Cambridge: Polity, 2004), 1-33.

¹³⁶ Jorge Reina Schement and Leah Lievrouw, “A Third Vision: Capitalism and the Industrial Origins of the Information Society,” in *Competing Visions, Complex Realities: Social Aspects of the Information Society*, ed. Jorge Reina Schement and Leah Lievrouw, 43-44 (Norwood, New Jersey: Ablex Publishing Corporation, 1987).

¹³⁷ Alistair S. Duff, *Information Society Studies* (London: Routledge, 2000), 1-18.

¹³⁸ Frank Webster, *Theories of the Information Society*, 2nd ed. (London: Routledge, 2002), 263-273.

¹³⁹ Soon-Yong Choi and Andrew B. Whinston, “The IT revolution in the USA: The Current Situation and Problems,” in *The Internet Revolution*, ed. Emanuele Giovannetti, Mitsuhiro Kagami, and Masatsugu Tsuji, 203-222 (Cambridge: Cambridge University Press, 2003).

¹⁴⁰ Manuel Castells, *The Rise of the Network Society* (Malden, MA: Blackwell, 2000), 216-354.

infrastructure and delivery mechanisms in order to produce, process, and distribute information.

The success of the information economy has been accompanied by the rapid advances and widespread use of information and communications technologies. The new technology has continuously reduced the costs of production and transmission of information, and consequently increasing the amount and flow of information of all kinds. Unlike other industrial products, the distinguishing characteristic of information goods is that the value of the information is greater than the value of the physical objects that contain the content. The major cost of information is the intellectual work that involves the interpretation of data or the original intellectual activity in production. For example, the software industry pays the cost of developing programs for people who provide their expertise and experience to transform raw data into knowledge such as the creation of music or video.¹⁴¹ However, information unlike physical goods can be easily copied and transmitted. Nearly always, it is not the original, but the copy that is exchanged. With the remarkable ease of duplication, a majority of enterprises and organizations has continued to increase speed, volume, and interactivity of communication.

In the information society, the information or knowledge has become an economic means as well as a commodity in itself.¹⁴² For corporate sectors valuing information as a trading commodity, information becomes the principal product of the modern economy in the market place. The modern economy has increasingly realized the

¹⁴¹ Lee Komito, *The Information Revolution & Ireland* (Ireland: University College Dublin Press, 2004), 61-62.

¹⁴² Jorge Reina Schement, ed., *Encyclopedia of Communication and Information* (New York: Macmillan Reference USA, 2002), 430-432.

exchange value of information, and generated a market for information commodities.¹⁴³

The term ‘information economy’ properly reflects this natural trend and tendency of economic characteristics. Treating information as though it is a physical object and dealing with information as a commodity in marketplace, the information economy sustains the information society.

An information society places information in a central role in all aspects of life, not just in economic life. In this information society, more information is produced and communicated among a large number of people than before. An information society is a knowledge-intensive society, in which our everyday lives are structured by the information that we access as well as the information about us that other people and organizations use. The information is fundamental and crucial for the survival of that society.

4.2.2 Commoditization of personal information

In the information society, information has a real economic value for a final product as well as an intermediate good to facilitate it. The idea of information as a commodity encourages companies to create usable information as products for recently developed global information markets.¹⁴⁴ This commoditization of information (or

¹⁴³ Richard N. Stichler, “Ethics in the Information Market,” in *Ethics, Information, and Technology: Readings*, ed. Richard N. Stichler and Robert Hauptman, 174-175 (Jefferson, North Carolina: McFarland & company, 1998).

¹⁴⁴ Viktor Mayer-Schönberger, “Cyberlaw Discourses: An Analytic Framework,” in *Academy & the Internet*, ed. Helen Nissenbaum and Monroe E. Price, 227-228 (New York: Peter Lang, 2004).

informational materialism)¹⁴⁵ has brought the importance of information, in particular, personal information, into the economy. Especially for corporate sectors, personal information is necessary and primary to create target consumers and to promote sales strategies. They are eager to collect, store, and use consumers' information, sometimes without consumers' recognition or knowledge. Consequently personal information itself has become one of the most important kinds of information and a commodity by itself in the information economy.

There are two reasons for an increased importance of personal information issues in the information economy. First, personal information is a critical tool for promoting competition and innovation in the market, especially on the Internet. Because personal data have become a kind of contract between most customers and businesses, information privacy is most at risk in a profit-driven society that converts personal information into tradable commodities.¹⁴⁶ Second, the advances in information technology have not only made it possible to record personal information at the point of sale, but also to draw the patterns of online behavior and make profiles of individuals.¹⁴⁷

Personal information can be subject to risk when it is combined with other data for creating new information because the resources are comparatively inexpensive and widely available.¹⁴⁸ In fact, information technology does not simply gather more of the same data, but it also collects more kinds of data and is used to generate more

¹⁴⁵ Jorge Reina Schement and Leah Lievrouw, ed., *Competing Visions, Complex Realities: Social Aspects of the Information Society* (Norwood, New Jersey: Ablex Publishing Corporation, 1987), 3-4.

¹⁴⁶ David Brin, *The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?* (Reading, MA: Addison-Wesley, 1998), 57-58.

¹⁴⁷ Herman T. Tavani, "Privacy On-Line," *Computers and Society* 29, no. 4, (1999): 11-19.

¹⁴⁸ Fred H. Cate, "Principles of Internet Privacy," *Connecticut Law Review* 32, no. 3 (Spring 2000): 877.

comprehensive data by using computer programs to sift through large databases according to specified criteria.¹⁴⁹ The possible sorting lists are numerous: income, wealth, marital status, family size, age of children, credit card use, ethnic and religious background, political affiliation, number and type of automobiles, occupation, home ownership, length of residence, type of dwelling, or medical diagnosis. The Internet is vulnerable in regards to data matching and linkage because it is easy and efficient to gather, store, search, compare, retrieve, and collaborate personal information.¹⁵⁰

For economic efficiency and effectiveness, big companies and government agencies are expected to exchange or reuse personal information for purposes different from the original one in collecting it. Through these methods, of course, industries and government can reduce the redundancy of data collection as well as the cost of maintaining separate databases. However, data matching and linkage by using computers have long been recognized as real threats to the privacy of individuals.¹⁵¹ To prevent the abuse of personal information, most policy concerns about the protection of personal information emphasize fair information practices in which personal information should be used in the right way and for the right purpose under the provider's control.¹⁵²

¹⁴⁹ Julie E. Cohen, "Privacy, Ideology, and Technology: A Response to Jeffrey Rosen," *Georgetown Law Journal* 89 (June 2001): 2037.

¹⁵⁰ Robert O'Harrow Jr., *No Place to Hide* (New York: Free Press, 2005), 247-280.

¹⁵¹ Michael R. Rubin, *Private Rights, Public Wrongs: The Computer and Personal Privacy* (Norwood, New Jersey: Ablex Publishing Corporation, 1988), 59-74.

¹⁵² Fair information practices require that "personal information must be: 1) obtained fairly and lawfully; 2) used only for the original specified purpose; 3) adequate, relevant and not excessive to purpose; 4) accurate and up to date; 5) accessible to the subject; 6) kept secure; and 7) destroyed after its purpose is completed." David Banisar, *Privacy & Human Rights: An International Survey of Privacy Laws and Developments* (Washington D.C.: Electronic Privacy Information Center, 2000), 8.

Most electronic records are collected and kept for one single purpose. With the modern information technology, however, it is very easy and cost-saving for companies to develop consumer profiles by using data matching and linkage. Sharing and merging of personal information are intended for another purpose. Data matching and linkage are violations of fair information practices due to the lack of consent to use their information for other purposes beyond the original.

4.3 Personal Information on the Internet

4.3.1 The Internet in the information society

The information society is maintained by information technologies that make it possible to create, distribute, store, and consume an incredible amount of information. In the contemporary era, the Internet technology linking computers with telecommunications has brought the digital revolution of information. The digital nature of the Internet distinguishes it from other communications technologies. The Internet combines various modes of communication (personal, group, and mass communication) and different forms of content (text, visual images, audio, and video) into a single medium.¹⁵³ This integrating capability of Internet differentiates it from the other communications technologies such as telephone, printing press, radio, and television. One of the most unique properties of the Internet comes from its interconnectedness or

¹⁵³ Paul Dimaggio et al., "Social Implications of the Internet," *Annual Review of Sociology* 27 (2001): 307-308.

interactivity. As a communication tool, the Internet is an unlimited global communication system composed of numerous networks. There are no centralized controls and no boundaries on the Internet because it is an international network of interconnected computers. The net is in fact a factual description of a decentralized constellation of computers linked together in which vast stores of digital information are available.¹⁵⁴

If any computer is connected to one part of the Internet, then ultimately it can be connected to all of it. Unlike other communication media, even if one part of the network is out of order, the rest of the network would not be affected. It is now a well known fact that the Internet, built for military purpose during the Cold War, was designed to allow communication to continue between survivors even after a nuclear attack.¹⁵⁵ Data are transmitted across the Internet via 'packets,' which are separate pieces of datum. In other words, information being sent from one computer to another computer is divided into small packets of data. Individual packets can follow all possible, sometimes different, routes to reach a destination, even though they together comprise a single message. Upon reaching the intended destination, the packets are reassembled into the original data. This means of transmission, unlike traditional telephone service, does not require a dedicated connection between the sender and the recipient, and therefore, allows highly efficient use of network resources. The Internet enables individuals and organizations to interact with distant others on an unprecedented scale. The ability to reach everywhere on the

¹⁵⁴ David Brown, *Cybertrends: Chaos, Power and Accountability in the Information Age* (London: Penguin, 1998), 4.

¹⁵⁵ James Slevin, *The Internet and Society* (Cambridge, UK: Polity Press, 2000), 28-34.

Internet has made it possible to establish borderless and international communication by using its networks.¹⁵⁶

User control or user participation is another distinctive feature of the Internet. Due to the unique characteristics of its networks, the Internet is an interactive medium. Interactivity means that users have the ability to influence the flow of information or to modify its content. The Internet enables users to send and receive information by using networks. Traditional forms of mass communication such as the press and broadcasting are one way processes, typically from one source to many receivers. However, the Internet is nearly a multi-way process, including one-to-one, one-to-many, and sometimes many-to-many communication. The traditional communication structure is easily controlled due to a small number of sending sources; on the contrary, the Internet structure is hard to control due to unmediated connections among innumerable participants similar to sources. One of the attractions of the Internet is to provide a virtual public sphere in which participants can share information and communicate with others.¹⁵⁷ In other words, the Internet provides for users more possibilities to participate and control communication flow. Unlike the other traditional electronic media that require scheduled programs, the Internet provides a flexible mechanism so that users can decide at any time to make different choices, without depending upon a fixed program.

¹⁵⁶ Kenneth S. Rogerson and Thomas G. Dale, "Internet Regulation Process Model: The Effect of Societies, Communities, and Governments," *Political Communication* 15, no. 4 (Oct.-Dec. 1998): 428.

¹⁵⁷ Balázs Vedres, László Bruszt, and David Stark, "Organizing Technologies: Genre Forms of Online Civic Association in Eastern Europe," in *Cultural Production in a Digital Age*, ed. Eric Klinenberg, 171-175 (Thousand Oaks, CA: Sage, 2005).

On the Internet all information is transferred digitally. The digitalized transmission can exchange and process many forms of databases so that information gathered in a certain form can be easily translated into other forms. This communications infrastructure supports multi-way communication. Thus, the process of production, distribution, and consumption has become converged. In other words, anyone can become both producer and consumer of information. This has resulted in the blur of the traditional distinction between the one-to-many of mass media and one-to-one private communication. The Internet is a networked interactive multimedia that implies simultaneous use of more than one medium object such as audio, text, and image.¹⁵⁸ For example, an e-mail can contain a text message, images, and music (or with attached forms). The Internet can handle other conventional media or combination of media as well. By using horizontal networks of communication, users can import new material and modify the structure of proposed information for their purpose. Thus, users' ability of control and participation is tremendously increased.

4.3.2 Information privacy in the Internet environment

In the information society, personal information is collected automatically as people shop, bank, pay bills, and fill in various kinds of forms in their daily lives. People unavoidably expose their information in the networked society, even without the recognition of giving such information. In terms of privacy, information about

¹⁵⁸ Stephen Weinstein, *The Multimedia Internet* (New York: Springer, 2005), 4-6.

individuals is the most important and crucial factor as a core element of privacy, especially in a profit-driven information economy. In fact, information technology makes invasion of privacy easier than ever because the cost of privacy violation is significantly reduced due to the advantage of quantitative multiplication and qualitative profiling on personal information by using interlinked networks. The main concerns of privacy concentrate on the term “personal information.” Personal information is any data about an individual that is identifiable to the specific individual.¹⁵⁹ The term “personal” does not mean only particular sensitive, private, or embarrassing information. Instead, it points out a relationship between the information and a person, that the information is somehow identifiable to an individual regardless of the degree of sensitivity or triviality.

According to Kang, the relationship of information and an individual can be recognized in three ways.¹⁶⁰ 1) An authorship relation to the individual: Information belongs to an individual who has purposefully created or prepared it (*i.e.* telephone conversation, personal diary, love letter, or e-mail). Thus, authorship occurs between an individual and information. 2) A descriptive relation to the individual: Information can designate a specific individual by depicting biological and social status or states of the individual (*i.e.* sex, birth date, or membership in religious and political organizations). 3) An instrumental mapping relation to the individual: When information does not have an authorship and descriptive relation to an individual, some information instrumentally points out specific individuals. The Social Security Number does not describe the

¹⁵⁹ Richard S. Murphy, “Property Rights in Personal Information: An Economic Defense of Privacy,” *Georgetown Law Journal* 84, no. 7 (July 1996): 2383-2384.

¹⁶⁰ Jerry Kang, “Information Privacy in Cyberspace Transactions,” *Stanford Law Journal* 50 (April 1998): 1206-1208.

individual's state-of-being or actions, nor is it created by the individual. It is merely mapped to the individual by the federal government for record keeping purposes. These three relationships are not mutually exclusive and can contain both or all of them at the same time.

Simplifying the relationship of information to the individual, personal information is the information around a person. Personal information means information space attached to an individual. Thus, privacy for personal information can be conceptualized as the protection of the information space that contains personal information. In this sense, privacy rights can be understood as rights to control the flow of information in and out of this private information zone.¹⁶¹ However, the growing collection and use of personal information in digital form has long been viewed as a privacy problem because it has increasingly raised the issue of invasion of an information space. As an information society sustained by information technologies has evolved, the main concerns about privacy have focused on information privacy due to the extraordinary importance of personal information.

The importance of information privacy depends on the two driving forces: the new technological factor and the increasing value of information.¹⁶² The increasing sophistication of information technology with its capacity to collect, analyze and disseminate information about individuals has introduced a sense of urgency in the demand for privacy. On the other hand, information about individuals has an economic

¹⁶¹ Renée Marlin-Bennett, *Knowledge Power: Intellectual Property, Information, and Privacy* (Boulder, Colorado: Lynne Rienner Publishers, 2004), 14. 169-170.

¹⁶² Jeff H. Smith, *Managing privacy: Information Technology and Corporate America* (Chapel Hill: University of North Carolina Press, 1994), 7-9.

value because it is transmitted as a kind of commodity in modern society.¹⁶³ The commoditization of personal information is inimical to privacy. For firms and governments having access to databases of information about individuals, it is easy to create and manipulate them. Without their recognition, people are exposed to the abuse of their personal information. Because information is the cornerstone of a democratic society, market economy, and public or government services, information privacy has been a core privacy interest recently.

The increased concerns of personal information in society make information privacy the most important aspect of privacy rights. Information privacy refers to a kind of right to control the public and private disclosure, distribution, and use of personal information that is identifiable to the individual.¹⁶⁴ The control over personal information allows individuals to limit society's access to them. This privacy right means freedom from observability, without which individuals are totally open to others in an information society as if they are unclothed.¹⁶⁵ Privacy entails the control to disclose (or not disclose) personal data without incurring the risk of unwanted social control by others.¹⁶⁶ In this context, privacy is the ability to exercise control over personal information over which anyone reasonably expects to manage.¹⁶⁷ The dominant trend in privacy protection is to

¹⁶³ Simon G. Davies, "Re-Engineering the Right to Privacy: How Privacy Has Been Transformed from a Right to a Commodity," in *Technology and Privacy: The New Landscape*, ed. Philip E. Agre and Marc Rotenberg, 143-165 (Cambridge, MA: The MIT Press, 1997).

¹⁶⁴ Joseph Rosenbaum, "Understanding Privacy in an Age of Information," in *Privacy Handbook: Guidelines, Exposures, Policy Implementation, and International Issues*, ed. Albert J. Marcella Jr. and Carol Stucki, 304-306 (Hoboken, NJ: John Wiley & Sons, 2003).

¹⁶⁵ Robert C. Post, "Three Concepts of Privacy," *Georgetown Law Journal* 89 (June 2001): 2095-2096.

¹⁶⁶ Brian Shapiro and Richard C. Baker, "Information Technology and the Social Construction of Information Privacy," *Journal of Accounting and Public Policy* 20 (Winter 2001): 295-296.

¹⁶⁷ Jeffrey Rosen, "Out of Context: The Purposes of Privacy," *Social Research* 68 (Spring 2001): 215.

provide citizens or customers with reasonable control over their personal information without the intervention of others, including government in the public area and companies in the private.

The key point on privacy right focuses on the control of the flow of personal information across an imagined barrier that divides the private from the public. Even though personal information is not perceived as a commodity in a way that gives a person ownership of information about oneself, controlling the movement of personal information is crucial to the meaning of privacy. We are constantly negotiating the location of the public-private boundary in our daily lives, and privacy means the ability to maintain the control of passage of information across that boundary.¹⁶⁸ The control of personal information concerns the flow of information to private boundary or the management of personal information space, through which people can control unwanted extraction of personal information such as an identity theft (going out of information space) as well as unintended reception of information such as spam e-mails (coming in information space).

4.4 Privacy and the Internet in the Present Age

The ability of interactivity and control in the Internet allows users a greater degree of freedom than previous communication technologies did.¹⁶⁹ These characteristics of the Internet have affected the circumstance of society, culture, politics, and economics in a

¹⁶⁸ Renée Marlin-Bennett, 16-17.

¹⁶⁹ Denis McQuail, *McQuail's Mass Communication Theory*, 4th ed. (London: Sage Publications, 2000), 28-29.

broad level, as well as community life, family life, and human relationships on an individual level. Privacy is also no exception. The Internet environment has posed new threats to individual privacy in daily lives.

Examining the characteristics of the Internet, different from other technologies, we can extend our understanding of the new privacy concerns that Internet technology has brought. The people on the Internet cannot avoid leaving information footprints in the course of daily life. It is well known that the computer systems managing the web sites may capture, record and retain information about the identity and the features of Internet users. Usually the track of Internet activity habits is left through cookies. A cookie is a file that may be placed on user's hard drive without one's knowledge by a web site to allow it to trace the use of visiting sites. Once information is posted on the Internet, no matter how carefully guarded, it exists somewhere else, where virtually anyone can gain access to it.¹⁷⁰ Due to its uniqueness of networks and the users' ability to control information, the Internet has increasingly threatened the privacy right of people who wish to keep various kinds of important information such as medical records out of others' sight.

Before the digital era, there were pragmatic restrictions on the ability to collect, store, and retrieve information. All information work required human labor, which played a kind of gate-keeping role on access to information. Most information was stored in document files in certain places. To obtain some information, someone in charge of document files should help to retrieve them. Thus, individuals retained their private

¹⁷⁰ Carole A. Lane, *Naked in Cyberspace: How to Find Personal Information Online* (Wilton, CT: Pemberton Press, 1997), 41-46.

information because information was obtained through labor intensive work. However, digitalized information no longer requires the human intervention. With the digital information revolution, information has two intrinsic characteristics: non-depletable and non-exclusive.¹⁷¹ Common to public goods such as parks and libraries, both characteristics imply that information is not consumed through use and it is not restricted to those who have the right of use. Anyone has easy access to a huge amount of information with the click of a mouse because all digitalized information is constantly stored on the Internet.

The production and distribution of information through communications technologies, except the Internet technology, have constantly been controlled by political and social restraints. Since the appearance of print technology invented by Gutenberg in the fifteenth century, for example, the production of books and then newspapers had always been surrounded by license, censorship, copyright, and national, moral, market constraints.¹⁷² Similar restraints occurred in the development of electrical technology of both radio and television. Due to the scarcity of frequencies in the air, a radio or television station must get permission from government for the service of public interest. The regulation of print and broadcasting has concentrated on the small number of production sources. As such, privacy protection, before the era of the Internet, has limited the power of main privacy invaders. Government has been a main invader of privacy of personal territory such as the occupation of a citizen's territory for a political purpose.

¹⁷¹ Lee Freeman and A. Graham Peace, *Information Ethics: Privacy and Intellectual Property* (Hershey, PA: Information Science Publishing, 2005), 123-126.

¹⁷² Paul Walton, "Cyber-ethics: Regulation and Privatization," in *Ethics and Media Culture: Practices and Representation*, ed. David Berry, 210-214 (Oxford: Focal Press, 2000).

Mass media have been main intruders of privacy of personal life such as the scandal of a political candidate in society. In the information age, however, companies have become primary threats for privacy of personal information for the profit pursuing purpose.

While companies have been creating customer profiles or product purchasing trends, the increase in information gathering, packaging, and selling has naturally intruded on the personal right of privacy. Over the past decades, privacy concerns concentrate on issues about personal information, which has become the greatest interest for the information society. The corporate sectors become the main agents for privacy violations due to the increasing reuse or abuse of personal information for profit making in the marketplace.¹⁷³ These concerns reflect that the main privacy concerns have moved to the abuse of personal information in the economic realm, from the disclosure of personal life in the social realm where mass media played an important role.

The importance of personal information has elevated the problem of information privacy, an individual's right of personal information, because technological advances in data collection and processing has made it difficult for individuals to control when, what kind, and for how much and long their personal information is accessible to others. The interest of information privacy is always about the control of the flow of personal information. More specifically, information privacy is a right to manage the personal information space where information relevant to a person comes in and goes out. In other

¹⁷³ Doreen Starke-Meyerring, Dan L. Burk, and Laura J. Gurak, "American Internet Users and Privacy," in *Society Online: The Internet in Context*, ed. Philip N. Howard and Steve Jones, 275-293 (Thousand Oaks, CA: Sage, 2004).

words, information privacy gives an individual the role of gatekeeper to control the personal information space.

Chapter 5

CONCLUSION: COMPARING CONCEPTS OF PRIVACY IN RELATION TO CHANGING COMMUNICATIONS TECHNOLOGIES

5.1 The Agents of Privacy Concerns

The advent and development of communications technologies has affected the shape of society, in particular the fundamental structures of communication in society. Roughly, we can explain distinctive structures created by communications technologies in terms of the direction and amount of communications. Personal communication is usually dedicated to a specific person. For example, we can communicate with each other using a telephone that has a one-to-one communication structure. Historically, telegraph has also been a personal medium through which people can communicate one-to-one in a private manner. On the other hand, the advances of communications technologies such as the printing press, radio, and television have changed the structure of communication to one-to-many. These communications technologies are called mass media, which communicate with massive audiences in a public manner.

The Internet with digitalization has integrated personal and mass communication as well as all formats of communication. The Internet is a personal medium through which people can communicate with a specific person in a private manner. It is also a mass medium on which people can communicate simultaneously with many others in a public manner. The versatility of Internet communication encompasses all kinds of historical

innovations in communications technologies: telegraph, telephone, printing press, radio, and television.¹⁷⁴

In terms of production and distribution of information, we can also categorize all media into three modes: one-to-one, one-to-many, and many-to-many. To take an example of text technologies, one-to-one communication such as letters has the private production and distribution by individuals of single copies for other individuals. The one-to-many or mass communication such as magazines and newspapers has the public production and distribution by wealthy organizations of multiple copies for massive audiences. The many-to-many or Internet communication, encompassing one-to-one and one-to-many communication, has all aspects of private and mass production and distribution.

The information consumption in the light of the audience, on the other hand, has a two-tier system similar to the production and distribution of information. One tier is private consumption in which information circulates among a small and domestic group of people. The other tier is public or mass consumption in which information circulates among the larger public or massive audiences.¹⁷⁵ Like the production and distribution of information, the Internet has the same dual characteristics of information consumption in which private and mass consumption co-exist.

The many-to-many communication of the Internet blurs the conventional producer (distributor)-receiver dichotomy. Information flows reciprocal ways due to the

¹⁷⁴ Robert J. Klotz, *The Politics of Internet Communication* (Lanham, Maryland: Rowman & Littlefield Publishers, 2004), 2-5.

¹⁷⁵ Lee Komito, *The Information Revolution & Ireland* (Ireland: University College Dublin Press, 2004), 26-35.

interactive capacity of the Internet. All Internet users can be producers as well as receivers for information flow. The increase in information producers has brought the information explosion by which the incredible amount of information is circulated in the private and public domain. Significantly, this increased amount of published information is not mediated by any groups. Before the Internet era, information might be prohibited or restricted from publication by the small, but powerful group of producers who own the facility of production and distribution, and execute their interests.

It is very interesting that the development of communications technologies has changed not only the communication structure of society, but also as a result the issues of privacy. Table 2 succinctly shows the relationship between communication structures and privacy concerns.

Table 2: Communication structures and privacy concerns

Era	Before Mass Media	Mass Media	Internet
<i>Communication Mode</i>	Private Communication	Public or Mass Communication	Internet Communication
<i>Production and Consumption</i>	One-to-One	One-to-Many	Many-to-Many
<i>Format: Text</i> <i>Audio</i> <i>Video</i>	Telegraph (letter) Telephone Videophone	Printing Press Radio Television	Internet (Combination of All or Digital)
<i>Agents of Privacy Concerns</i>	Government	Mass Media	Corporations Individuals
<i>Dimension of Privacy Concerns</i>	Political	Social	Economic

Before the mass media era, the main concern of privacy focused on the government that has the power to invade and occupy the private territory. The Fourth Amendment at the time of the founding fathers clearly demonstrated that the government should respect the private territory and domestic space of citizens. At that time, privacy meant the protection from censorship and invasion by the administration of government. Simply speaking, the government was the main agent of citizens' concerns for the protection of their personal belongings and privacy of private territory. Privacy at that time resulted from political concerns in a sense that government had a power to invade a citizen's territory.

The advent of newspapers dramatically converted the concerns of privacy. Warren and Brandeis raised the issue of incursions into privacy by the burgeoning newspapers in the late nineteenth century. With the means of mass distribution eliminating the limitation of space and time, the mass media had the ability to disseminate private affairs to audiences; otherwise they were kept in secrecy. The concerns of privacy have moved to the disclosure of personal affairs to the public from the traditional preserve of private space. Thus, mass media represented by the printing press, radio, and television became the principal invader of privacy, replacing the government. Privacy concerns also moved to the social dimension, disclosing personal and domestic lives of significant individuals in society.

Today, the rise of the Internet has brought new privacy concerns that are different from the mass media era. The Internet has exploded the amount of information in an information society. Personal information has become a real value as a kind of commodity in the information economy. The main issue of privacy focuses on

information privacy because personal information is easily transferred without one's recognition and consent in computer databases and cyberspace. Corporations and individuals can collect, store, and use personal information for the purpose of their profits and interests. In the era of the Internet, the private sectors including companies and individuals become the main violators of information privacy, replacing the public sectors including government and mass media. Information privacy also reflects the importance of personal information, especially in the economic activities in the information society.

5.2 The Changing Aspects of Privacy Violation and Protection

Communications technology in each era has affected not only the communication structure of society, but also consequently the diverse aspects of privacy. New communications technologies have caused new concerns of privacy, not experienced in a previous era. The new concerns of privacy necessarily reflected the important aspects of privacy in terms of violations and counteractive protections in a specific era. People began to recognize changing aspects of privacy in relation to communications technologies. The mass media and the Internet have been the principal media that have impacted the existing content of privacy. Table 3 explains the changing features of privacy in terms of the advent of typical communications technologies in regards to the content of privacy, the zone of privacy, the agents and types of privacy violations, and the protection of privacy.

Table 3: Aspects of privacy in terms of typical communications technologies

Era	Before Mass Media	Mass Media	Internet
<i>Content of Privacy</i>	Personal Territory	Personal Affairs	Personal Information
<i>Zone of Privacy</i>	Personal Space	Personal Life	Information Space
<i>Agents of Privacy Violations</i>	Government	Mass Media	Corporations Individuals
<i>Types of Privacy Violations</i>	Invasion	Disclosure	Abuse
<i>Protection of Privacy</i>	Safeguard of Personal Belongings	Freedom from Public Sphere	Control over Information Space

In regard to the content of privacy, the advent of mass media raised new privacy concerns of personal affairs from personal territory. Before mass media appeared, privacy meant the personal space that physically surrounds personal existence and belongings. However, the publicity of mass media created the new public sphere that extended the physical coexistence of time and space. The rapid distribution of information diminished the realm of the private sphere, which belongs to the private domain. As a result, the extension of the public sphere by mass media threatened the privacy of personal life. The main content of privacy, on the other hand, shifted to the publication of personal affairs from the trespass on personal preserves.

The rise of computer technology and the birth of the Internet have created new privacy concerns. The proliferation of digital databases has created new and different problems. The problems created by the digital dossiers are quite broad, and they apply to

the entire information society.¹⁷⁶ Most information flow occurs without the knowledge of people. The flow of personal information is the main concern of privacy because the abuse of personal information on the Internet has more possibility than any other communication technologies. In the information age, concerns of privacy focus on the information privacy or flow of personal information along with the invasion of private space and the disclosure of private life.

In relation to the violation and protection of privacy, the traditional zone of privacy is limited to physically personal space such as house, private space, and personal belongings. If people lost their privacy, it meant that someone invaded personal space that belonged to the owner. Thus, the typical feature of privacy violation was described as invasion or attack that implied the occupation of a specific place. The traditional privacy concept was intrinsically related to the spatial concept. The protection of privacy meant the safeguard of private space, which secured personal belongings in a one's own territory.

In the mass media era, the zone of privacy moved to private life because mass media revealed the personal affairs that individuals wanted to keep in the private domain. The main privacy zone became domestic private life, instead of the previous personal space. The characteristic of privacy violation was unwanted disclosure of personal affairs by mass media. The important function of mass media that extends the personal sphere into the public sphere has in essence brought an unexpected threat to individual privacy.

¹⁷⁶ Daniel J. Solove, *The Digital Person: Technology and Privacy in the Information Age* (New York: New York University Press, 2004), 74-75.

The protection of privacy meant freedom from the public sphere created by mass media or others' observability.

In the information age, the primary zone of privacy is personal information space through which personal information flows in and out. The main concerns of privacy center on the protection of personal information. People are no longer able to exercise control over their information because personal information is for the most part subjected to a bureaucratic and business process that is itself beyond their control. The violation of privacy means the abuse of personal information without the recognition or knowledge of the person. Thus, the protection of privacy in the present age is to prevent the possibility of abuse of personal information. In this context, the privacy rights can be understood as the power of individuals to control or manage their information space filled with important personal information.

5.3 The Relationship between the Nature of Privacy and Typical Communications Technologies

The basic and fundamental nature of privacy is related to human traits such as body, heart, and mind as I mentioned in Chapter 2 earlier. The development of communications technologies has raised new and different concerns of privacy, which showed one aspect of the diverse nature of privacy. In order to analyze the relationship between the nature of privacy and typical communications technologies, Table 4 shows the changing conceptions of privacy in relation to communications technologies by combining together Table 1 in Chapter 2 with Table 3 in Chapter 4.

Table 4: The relationship between the nature of privacy and typical communications technologies

Era	Before Mass Media	Mass Media	Internet
<i>Content of Privacy</i>	Personal Territory	Personal Affairs	Personal Information
<i>Zone of Privacy</i>	Personal Space	Personal Life	Information Space
<i>Agents of Privacy Violations</i>	Government	Mass Media	Corporations Individuals
<i>Types of Privacy Violations</i>	Invasion	Disclosure	Abuse
<i>Protection of Privacy</i>	Safeguard of Personal Belongings	Freedom from Public Sphere	Control over Information Space
Aspects of Privacy	Body (Physical Privacy)	Heart (Emotional Privacy)	Mind (Spiritual Privacy)
<i>Pro-privacy (Privacy)</i>	Solitude Closedness	Secrecy Confidentiality	Autonomy Independence
<i>Anti-privacy (Publicity)</i>	Society Openness	Disclosure Exposure	Heteronomy Dependence

The traditional privacy nature is connected with the body of the human being. In other words, the original privacy concept is spatial privacy based on the physical body. The solitude for privacy means retreat or distance from others or society to have private space. Thus, anti-privacy means close attachment to congregation of others or society, as a result the absence of private space. In this sense, physical privacy is to preserve the closed and reserved territory inaccessible by others in order to possess private space.

The nature of emotional privacy is to develop the intimate relationship with others. The advance of communications technologies helped the intimate relationship and communication with others in a way that they extended the sensual ability of human beings. For example, the telegraph and printing press are the textual extension of human

ability to see. As such, the telephone and radio are the audio extension of human ability to hear, and the television is the visual extension. This extension of human ability enhanced the relationship and communication of human beings. However, the publicity of mass media would hurt the emotional relationship of people by disclosure and exposure of personal life; otherwise, it remains in the secrecy and confidentiality of the private domain. The public sphere provided by mass media is the chief enemy of emotional privacy, which requires the private sphere where natural feelings are exchanged. If someone's expression and behavior are watched by unfamiliar others, they feel uncomfortable and even get stressed emotionally. Mass media have long been recognized as anti-privacy because they publicize the intimate personal life such as love relationships and friendships to the society. While mass media extended the public realm, they posed more threats to emotional privacy.

The importance of information privacy can be connected with the mind of a human being in a way that privacy means the autonomous right of personal information in the Internet age. Spiritual privacy helps to shape one's own personality and life style by supporting autonomy and independence in order to decide the course of one's own life without the interference of other agents. In a similar vein, personal information is subject to the hand of an individual, not the others. The spiritual aspect of information privacy emphasizes the autonomy about how and what kinds of personal information are available to others under various circumstances. Considering that the flows of personal information automatically occur in most activities of the information society, the information privacy underlines autonomy and independence of individuals from other agents who desire to use their information.

Information privacy, on the other hand, can also be relevant to physical space in a way that the primary zone of information privacy is information space filled with information about an individual. Like conventional privacy, information privacy requires a safe information space in which personal information is inaccessible by others without permission. Combined with the space of personal information, the information privacy has the characteristics of both spiritual and physical privacy. The spiritual aspect of information privacy emphasizes control about personal information, and the physical aspect of it emphasizes the boundary on personal information. Thus, information privacy requires the safe territory of information space and autonomous control about personal information in information space.

5.4 Suggestions for Privacy Policy Making in the Internet Age

We can draw directions and guidelines of privacy policies in the Internet age from the findings we explored earlier. The zone of privacy in the Internet environment concentrates on the information privacy. Information privacy is related to the information space filled with personal information. In other words, information privacy has dual characteristics of privacy: the spatial nature of physical privacy and the autonomous nature of spiritual privacy.

The dual characteristics of information privacy suggest the directions of privacy policy making in the Internet era. The protection of information privacy has a very close relation with the management of information space that has both physical and spiritual aspects of privacy. With respect to the physical aspect of privacy, information privacy

means to have an information space, which is closed and distant from other agents and belongs to an individual. However, information space is artificial cyber space, not real physical space. In other words, the flow of information in and out of personal information space is different from the passage of one's physical territory. The border of information space is very vulnerable to invaders. In fact, frequently the intrusion to or extraction from information space is perceived after it happened. For example, unwanted spam e-mail occurs frequently on the Internet. Spam e-mail is a typical example of the intrusion into personal information space. It also designates the extraction of e-mail addresses, an important aspect of personal information. Spam e-mail demonstrates the abuse of personal information because someone unknown has taken and abused a private e-mail address. It is usually impossible to know how, when, and who did.

The artificial nature of information space makes the protection of information privacy very difficult because the intrusion to and extraction from an information space is invisible and hard to recognize. The transition of personal information without one's awareness causes the abuse of personal information and violations of information privacy. Thus, one of the effective and efficient methods for the protection of information privacy is to have an alarm system that indicates the flow of information coming in and going out through information space. When information passes the boundary of personal information space, individuals have to recognize the transition of information. The policy making for information privacy needs to contain the boundary concept of the information space of personal information. This is very similar to the traditional protection of privacy that applies the real physical boundary to the artificial information boundary.

In addition to the physical aspect, information privacy has the spiritual aspect that allows individuals to have autonomy and independence about their personal information. Personal information should be subject to the autonomy of an individual. Autonomy means the self control of personal information. Individuals should have power to control information about their personal circumstances. In the Internet environment, the protection of personal information means the control of the boundary of information space attached to an individual. Individuals are gatekeepers to manage this information space. Privacy is the ability to control the gate of their information space open or closed. In other words, individuals can manage the flow of information that comes in and goes out of the boundary of their information space. Information privacy policy needs to give individuals the ability to manage their information space in order that personal information should be subject to individuals, not other agents.

In terms of violation and protection of privacy, privacy policies must consider the main agents of privacy violations. The invasion of personal property by the administration of government and the disclosure of personal affairs by sensational mass media still pose a threat to individual privacy. The greatest threat to privacy, however, comes from the economic sectors eager to use personal information for diverse purposes in a profit-driven society. Personal information is frequently in danger because the flow of personal information occurs in cyberspace beyond the awareness of the person. In this context, the key point of use of personal information is for companies to have one's consent to personal information. The principle of one's consent is the first and most important rule of self-regulation on information privacy, which is currently suggested and supported by the Internet related industry. Because the main violators of information

privacy are corporations using personal information on the Internet, the Internet industry itself has a priority of self-regulation. One's consent to personal information reflects the importance of autonomy in information privacy, the characteristic of spiritual privacy.

To prevent the abuse and misuse of personal information in the information society, information privacy must be the most important issue of privacy policies.

Information privacy is a kind of right to safeguard the information space of personal information. To protect the information privacy, privacy policy in the Internet age must deal with the physical and spiritual aspects of information privacy. In this sense, the protection of information privacy needs the safeguard of information space and the control of personal information because information privacy requires the protection of both artificial boundary of information space and autonomous management of personal information. Privacy policies must provide individuals with rights of control over information space so that they can manage the flow of personal information coming in and going out.

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